44.89

START

FIRST

SIDE

42-114

Rfn Russell L. C.

RECORDED AT CMHQ ON AB 160 41-114

FIELD GENERAL COURT-MARTIAL

CFA 39B (To face fly-leaf of AFA 2) 40-10 M 8-44 (1808) 4/38B

Convened by Order of Brig N.G. Sprague Comd 7 Can Inf Bde dated 18 Dec 44

ACCUSED.

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

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H. 40849	Rfn	Lawrence Charles	RUSSELL	R Winn Rif

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 19 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 17-12-

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

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

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

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

A3. The Court is opened. The accused is (are) brought before the Court. At 1400 hours trial commences.

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

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

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

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

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

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

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

Ans No. (2)

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

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

President	Major	G.M. Edwards	H.L. of S.
Member	Capt	W.D. Ormiston	R Winn Rif.
Member	Capt	D.R. Forbes	Regina Rif.
Judge-Advocate			
Prosecutor	Lieut	Guy Richardson	R Winn Rif
Defending Offr	Lieut	N.R. Donogh	R Winn Rif.

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

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

A8. The accused H40849 Rfn Lawrence Charles Russell before arraignment make(s) (no) (a) plea(s). (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 24, 25(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

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

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

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

EUROPE 17

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No .....(1)
(I. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

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

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

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

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

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans I wish to give evidence on oath. Do you intend to call witnesses on your behalf ? Ans No. Are they witnesses as to character only ? Ans -
(I. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

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

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

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No
(I. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Convening Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 1 and Ex 2 respectively.(3)
(I. MFR 355 or MFR 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

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

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

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(I. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2323, MML p 60, 757-758. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

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

Accused : K49849 Rifleman Lawrence Charles RUSSELL

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(e.g., ice for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 12(1)(a)	Not Guilty.	Not Guilty	of Desertion. Not Guilty of Absence without leave.
2nd			
3rd			
4th			
5th			
6th			

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

~~At present under sentence for~~ ~~beginning on (date)~~ (~~I. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.~~)

Time in confinement awaiting present trial—a total of 14 days, of which 0 days were spent in hospital.(1)
(I. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :
To undergo detention for Six Months and to be put under stoppages of pay until he has made good the sum of £1 - 15 - 4 in respect of costs of apprehension and return.

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

19 Dec 44 Date awarded.

(Sgd) Hagg H. M. Edwards President. (RP 45, 50.) Major

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

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

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

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

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

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

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)
(I. AA 57A. Delete if not used.)

(Sgd) H. M. Hagg

Date 22 Dec/44 Commanding (JG BRIGADE) BRIG 7 Indian Div Confirming Officer.

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

Accused.	Date.	Signature of Offr.
K49849 Rfn Russell, L.C.	23 DEC 44	[illegible] Lt Col

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

8

CHARGE SHEET

The accused, K49849 Rifleman Lawrence Charles RUSSELL, Royal Winnipeg Rifles, a soldier of the Canadian Army, Overseas, is charged with:

First Charge
Sec 12 (1)(a)
Army Act

WHEN ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE

in that he

while his unit was engaged on active operations against the enemy, absented himself without leave with intent to avoid such operations, from 1000 hrs 7 Nov 44 until he surrendered himself to the Civil Police at 2200 hrs 5 Dec 44, incurring costs of apprehension and return to his unit in the amount of £1-15-4.

Total Time Absent: 28 days, 12 hours.

In the Field

16 Dec 44

(L R FULTON) Lt-Col,
OC, THE ROYAL WINNIPEG RIFLES

To be tried by Field General Court Martial:

Date: 19 Dec 44

.....
Convening Officer
(J G SPRAGGE) Brigadier
Comd 7 Canadian Infantry Brigade.

8

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(6).

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

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

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K.49849	Rfn	Lawrence Charles	RUSSELL	R Wpg Rif

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 15 Dec 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. ~~And whereas it appears to me that it is not practicable that the above charge should be tried by a General Court-Martial.~~

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

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

4. ~~I appoint the Offr mentioned hereunder to be Officer Commanding the Troops in the said Command.~~

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

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

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

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	G A M EDWARDS	H L I of C

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	W D ORMISTON	R Wpg Rif
Capt	D R FORBES	Regina Rif

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	K A J SUNSTRUM	Hq 7 Cdn Inf Bde

JUDGE-ADVOCATE.

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

On Active Service in the Fd

in Holland
(Country.)

Date 16 Dec 44

(Signature of Convening Offr. RP 105 fn 2.)

(J G Spragge)
Commanding 7 Canadian Infantry Brigade
Convening Officer.

Brigadier
(Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

THE ROYAL WINNIPEG RIFLES (AF)
(LITTLE BLACK DEVILS)
IN THE FIELD

19 Dec 44

"I have this day examined K49849 Rfn RUSSELL, L.C., and I find him...fit.....to undergo trial by Court Martial.

R M Caldwell Capt

(R M CALDWELL) Capt.,
RMO, R Wpg Rif

Plea in mitigation of Sentence

1349849

Rfn RUSSELL L.C.

[redacted] has been in the army almost two years, 8 months of that as an instructor, and four months in action with a line coy. Due to the fact that his conduct sheet up to this offense has been clear, and also of his service, I feel that as light a sentence as possible should be imposed. His high quality of service is much needed, and is beneficial to the Canadian army. I'm sure he's learned his lesson.

[redacted]

Capt
Commd

EVIDENCE IN THE CASE OF K49849 RFN RUSSELL, L C - R WPG RIF

The President explained to the accused that as RP 89 (B) and fn 2 had not been followed the accused was entitled, if he so desired, to an adjournment. Asked if he wished an adjournment the accused replied, "No Sir".

1st Witness for Prosecution

H9443 L/Sgt GOODALL, J, R Wpg Rif, sworn states:

"I am H9443 L/Sgt GOODALL, R Wpg Rif, 7 Sec 12 Pl "B" Coy. On 7 Nov 44 I was a Cpl in charge of 8 Sec 12 Pl "B" Coy R Wpg Rif. I recognize the accused, here present, as he was a member of my section. When we went for breakfast 7 Nov 44, Sgt HRANKOWSKI, J warned us of a move from GHENT and told us to warn our sections. At 1000 hrs I went to the billets where we were staying and could find no trace of Rfn RUSSELL. At 1030 hrs I went back to the house and asked at the house for the accused. I went up to the rooms where the accused was billeted and found the accused's equipment there but no trace of him. I reported the absence to the Sgt. We waited around till dinner and after dinner reported for the parade for which we had been warned that morning. The roll was called and Rfn RUSSELL was absent. After the parade we loaded on our trucks and moved off. All this happened in GHENT. We moved into action. I next met RUSSELL at "A" echelon after he was returned under escort."

Cross Examination

If I had looked at the section billet the day before, I would have found all my section there after breakfast. There was no order that they must be there at 1000 hrs. We usually had a parade 0930 hrs. There was no parade that morning. This was the reason I went to the billets.

Re- Examination

No parade was held that morning because we were getting ready to move.

Examined by Court

I did not see the accused at anytime between 7 Nov 44 and the time I saw him at "A" echelon approx 17 Dec 44. We had been told we would be moving but had not been told where or when. The Coy had definitely been told we would be moving. The Pl Sgt told me at breakfast time and I warned my section to get their equipment ready. This was after breakfast. I could not find Rfn RUSSELL. The Bn was in GHENT for a rest. I had not been told what the Bn would be doing when it left GHENT. I did not hear the accused say anything about going away and not returning to the Bn. I did not personally warn Rfn RUSSELL of a move because I could not find him.

RP 83 (B) has been complied with.

2nd Witness for the Prosecution

H43054 Sgt HRANBOWSKI, J, sworn states:

I am H43054 Sgt HRANBOWSKI, J and at present I am Pl Sgt of 12 Pl "B" Coy R Wpg Rif. On the 7 Nov 44 I was holding the same position. I recognize Rfn RUSSELL, here present as the accused and he has been in my Pl since the latter part of July.

On 6 Nov 44 we were still in GHENT and the CSM that night at meal parade warned all the Pl Sgts to see that all big packs were ready in the morning and to have the men ready to move off sometime the next day 7 Nov 44. The Sec Comds were warned by myself at approx 1700 hrs 6 Nov 44 that the regular morning parade was cancelled. On the morning of the 7 Nov 44 they were warned again to see that the packs were there at 1000 hrs and to have the men ready to move off at 1300 hrs. At approx 1000 hrs 7 Nov 44 Cpl GOODALL, now L/Sgt GOODALL, came to me and reported that he could not find RUSSELL. I sent Cpl GOODALL back an hour and a half later to see if he could find him again. He returned with the same reply as before that the accused was not there. At approx 1245 hrs 7 Nov 44 I lined the platoon up prior to embussing and called the roll. Rfn RUSSELL was not present. We received orders to embuss at 1300 hrs and left GHENT without RFN RUSSELL. I have not seen the accused from that time until the Summary of Evidence was taken a few days ago.

Cross-Examined by Defense

My orders were given to me by the CSM and I warned the Sec Comds whose duty it was to warn their sections. I could not warn my men individually as we were billeted around town. If a Sec Comd did not warn his section they would not be warned at all.

Examined by Court

As Rfn RUSSELL was still on my Pl strength for about 3 or 4 days his name was called by myself and he was marked absent each day. I have not heard the accused at anytime mention any intention of leaving the Bn and not returning.

RP 83 (B) has been complied with

3rd Witness for Prosecution

H17362 CSM WHITLOCK, B, sworn states:

I am H17362 CSM WHITLOCK, B, CSM "B" Coy R Wpg Rif. On 7 Nov 44 I was holding the same position. On the night of 6 Nov 44 I was warned that there was a move the next day. I warned all the Pl Sgts of a parade at 1300 hrs 7 Nov 44. At the parade at 1300 hrs 7 Nov 44 I was present and checked the platoons. The accused was reported to me at that time as being absent. Since that parade I have not seen or heard of the accused. The accused's duties on the 7 Nov 44 would be to pack up and get ready for the move at 1300 hrs. There was usually a parade at 0930 hrs but 7 Nov 44 it had been cancelled.

Cross-Examined by Defense

On the parade at 0930 hrs 6 Nov 44 the coy was not warned of a move as we did not know at that time. There was not a company parade between that time and 1330 hrs 7 Nov 44. It was a duty of the sec comds to warn the men of their sections. I warned the NCOs of the coy that the 0930 hrs parade was cancelled.

Examined by Court

I have never heard the accused state any intention of leaving the Bn and not coming back.

RP 83 (B) has been complied with

4th Witness for Prosecution

Capt BROOKS, W, sworn states:

I am Capt Brooks, W, acting OC "B" Coy R Wpg Rif. On 7 Nov 44 I was 2 IC "B" Coy R Wpg Rif. On the 7 Nov 44 at a parade of "B" Coy the men were ordered to make ready for operational duty. It was reported to me that 3 men were missing among whom was the Rfn RUSSELL, whom I recognize, here present as the accused.

Cross-Examined by Defense

The coy was warned to make ready for a move and that would be doing operational work.

Examined by Court

I personally did not warn anyone for a move. The order was given to the NCOs and they were to pass it on to the men. The parade was called at approx noon.

Rule of Procedure 83 (B) has been complied with

5th Witness for Prosecution

Lieut Grey RICHARDSON sworn states:

I am Lieut Grey RICHARDSON, Pl Comd 17 Pl "D" Coy R Wpg Rif. As prosecutor of this case I have custody of two documents which I now produce before this court. The first is a certificate of apprehension of K49849 Rfn RUSSELL, L C at 2200 hrs 5 Dec 44. The second is a certificate costs of apprehension also of K49849 Rfn RUSSELL, L C.

RP 83 (B) has been complied with

The court admits the documents as evidence and makes them Exhibits "D" and "E" respectively.

The Prosecution is closed

The defense submits that a prima facia case has not been made by the prosecution on the grounds that (1) although the unit was in a theatre of operations, it was at the time of the charge, resting in GHENT and not in action against the enemy. (2) Rfn RUSSELL was not warned of any move.

The Prosecution submits that regarding the first point - this does not enter into the picture. They were in an operational theatre and the fact that the unit was at rest has no bearing on the charge. Due to the method of warning the men, we cannot prove that RUSSELL was warned to be on that parade but we have evidence that RUSSELLS duty was to be in or around his quarters and that he was not there. Under AA Sec 15 fn 1 it states that absence an essential element of desertion , "must be from the place where it is his duty to be, and where he ought to be found if wanted".

RP 83 (B) has been complied with

The court does not allow the submission on the grounds that at least a case of "absence without leave" has been established.

CASE FOR THE DEFENSE

1st Witness for Defense

K49849 Rfn RUSSELL, L C, sworn states:

I am K49849 Rfn RUSSELL, L C of 8 Sec 12 Pl "B" Coy R Wpg Rif. I joined the army 3 Feb 43 at the age of 19. I joined a Lt AA Regt. Shortly after I was posted to ENGLAND where I became an Aircraft Recog Instructor. I held that position for about 8 months. The Regt was called to Active Service in another area and I was left behind as an instructorand I was told in April that I would be transferred to Infantry. I did not like this as I wanted to stay with the Lt AA. At the end of June I was sent to FRANCE as an infantry man where I joined the R Wpg Rif. I had tried before to get back to the AA but as I could not transfer out of the infantry I thought I might as well stick it out. I have been with the R Wpg Rif from the time of CARPIQUET to the SCHELDT pocket with a line company.

Cross-Examined by Prosecutor

I went absent because I wanted to get back to ENGLAND and see my girl friend. Some English soldiers had told me it was easy to get there and back by plane. In ENGLAND I stayed with my girl friend for awhile and then went with Rfn WASS to RAMSBOTTOM to see his girl friend. I had the intention of coming back but I knew a charge of absence without leave would be laid against me. I intended to go to MANCHESTER and give myself up to the Cdn Provost Corps. I had tried to fly back once but was unable to manage it. I flew to ENGLAND with the American Air Force. They did not know we were on the plane until it was in the air as we had stowed away. After the plane took off we showed ourselves to the engineer. He was the only one who knew we were on the plane.

Examined by Court

We tried to get a ride back after we had been away for about 16 days. The airfield that we landed at and tried to get back from was near GRANTHAM. I was not with WESS when a police constable came over and apprehended me.

RP 83 (B) has been complied with

[redacted]

[redacted]

[redacted]:

[redacted]

[redacted]

[redacted]

Evidence in the case of K 19849 Pfn Russell J. C. R.Wpg Rifles

The President explained to the accused that as R.P. 89 (B) & fn 2 had not been followed the accused was entitled, if he so desired, to an adjournment. Asked if he wished an adjournment, the accused replied "No Sir."

1st Witness for Prosecution

H 9443 T/Sgt. Goodall J., R.Wpg Rifles, sworn, states:

I am H 9443 T/Sgt Goodall, R.Wpg Rifles, & 87 Sec. 1st Pl "B" Coy. On 7th Nov 44 I was a Cpl in charge of 8 Sec 1st Pl "B" Coy R.Wpg Rifles. I recognize the accused, Lt. present, ~~Norman~~ as he was a member of my section. ~~Sgt~~ When we went for breakfast 7th Nov 44, Sgt Krankowski J warned us of a move from Ghent & told us to warn our sections. At 1000 hrs I went to the billets where we were staying & could find no trace of the Pfn. Russell. At 1030 I went back to the house and asked at all the houses for the

accused. I went up to the rooms where the accused was billeted & found the accused's equipment there but no trace of him. I reported the absence to the Sgt. We waited around till dinner & after dinner reported for the parade for which we had been warned that morning. The roll was called & Rfn Russell was absent. After the parade we loaded on our trucks & moved off. All this happened in Ghent. We moved into action, & next met Russell at "A" echelon after he was returned under escort.

~~In the time between~~

Cross Examination

If I had looked the day before, ~~after breakfast~~ after breakfast I would have found all my section billets. There was no order that they must be there at 1000 hrs. We usually had a parade 0930 hrs. There was no parade that morning. This was the reason I went to the billets.

Re-Examination

No parade was held that morning because we were getting ready to move.

Pte

Examined by Court.

I did not see the accused at any time between 7 hrs 14 & the time I saw him at H" Ecl approx 17 Dec 44. We had been told we would be moving but had not been told when. The coy had definitely been told we would be moving. The Pl Sgt told me at breakfast time & I warned my section to get their equipment ready. This was after breakfast. I could not find Pte Russell ~~tbe~~ The Bn was in Ghent for a rest. I had not been told what the Bn would be doing when it left Ghent. I did not hear the accused say anything about going ~~AWOL~~ away ~~staying away~~ not returning to the Bn. I did not personally want ~~Pte~~ Pte Russell of a move because I could not find him. RP 83 (A) has been complied with.

2nd Witness for the Prosecution

H-43054 Sgt Hrankowski S., sworn states I am H-43054 Sgt Hrankowski S and at present I am Pl Sgt of 1 Pl "B" Coy 1 W.p.g Rifles. On the 7 Nov 44 I was holding the same position I recognize Rfn Russell, he present as the accused & he has been in my Pl. since the latter part of July. On Nov 6/44 we were told by the CSM that we might at meal parade warned all the Pl Sgts to see that all big packs were ready in the morning and to have the men ready to move off sometime the next day, Nov 7/44. The by myself at approx 1700 hrs Nov 44 Sec Cmdrs were warned that the regular morning parade was cancelled On the morning of the 7 Nov 44 they were warned again to see that the packs were there at 1000 hrs & to have the men ready to move off at 1300 hrs On approx 1000 hrs 7 Nov 44 Cpl Goodall, now T/Sgt Goodall, came to me & reported that he could not find Russell.

I sent Cpl Hospatt back six hour and a half later to see if he could find him again. He returned with the same reply as before that the accused was not there. At approx 1245 hrs 7 hrs 44. I lined the platoon up prior to embussing & called the Roll. Rfn Russell was not present. We received orders to embuss at 1300 hrs & left Ghent without Rfn Russell. I have not seen the accused from that time until the Summary of Evidence was taken a few days ago.

Cross: Examined by Defense.

My orders were given to me by the CSM & I warned the Sec Cmdrs. whose duty it was to warn their sections. I could not warn my men individually as we were billeted around town. If a Sec. Cmdr did not warn his section they would not be warned at all.

Examined by Court.

As Rfn Russell was still on my ~~fl strength~~

for about 3 or 4 days his name was called by myself & he was marked absent each day. I have not heard the accused at any time mention any intention of leaving the Bn. & not returning.

R.P. 83 (B) has been complied with.

3rd Witness for Prosecution

H 1736 CSM Whitlock B. sworn states:

I am H 1736 CSM Whitlock B. C.S.M. B Coy R. Wpg. Rifles. On 7th Nov 44 I was holding the same position. On the night of 6 Nov 44 I was warned that there was a move the next day. I warned all the Pl. Sgts. of a parade at 1300 hrs 7 Nov 44. At the parade at 1300 hrs 7 Nov 44, I was present & checked the platoons. The accused was reported to me at that time as being absent. Since that parade I have not seen or heard of the accused. The accused's duties on the 7 Nov 44 would be to pack up and get ready for the move at 1300 hrs. This was usually a ...

Pte parade at 0930 hrs but at 7 Nov 44 it had been cancelled.

Cross examined by Defence.

On the parade at 0930 hrs 6 Nov 44 the coy was not warned of a move as we did not know at that time. There was not a company parade between that time & 1330 hrs 7 Nov 44.

It was a duty of the sec cdrs to warn the men of their sections. ~~The coy was not~~ I warned the NCOs of the coy that the 0930 hrs parade was cancelled

Examined by Court.

I have never heard the accused state any intention of leaving the battalion & not coming back.

R.P. 83 (B) has been complied with.

1st Witness for Prosecution

Capt Brooks W. sworn states

I am Capt Brooks W., acting OC "B" Coy R Wpg. Rifles. On 7 Nov 44 I was 2 i/c

"B" Coy R Wpg Rifles. On the 7 Nov 44 at a parade of "B" Coy the men were ordered to make ready for operational duty. It was reported to me that 3 men were missing among whom was the ~~accused~~ Pt Russell whom I recognize, he present as the accused.

Cross-examined by Defence:

The coy was warned to make ready for a move & that they would be doing operational work.

Examined by Court.

I personally did not warn anyone for a move. The order was given to the NCO's & they were to pass it on to the men. The parade was called at approx noons.

Rule of procedure 83(B) has been complied with

P3

8

2nd Witness for Prosecution

Lt A Trey Richardson sworn states
I am Lt Trey Richardson, Pl Cdr 17 Pl
"D" Coy R. Wpg Rifles. As Prosecutor of this
case I have custody of two documents
which I now produce before this court. The
first is a certificate of apprehension of K49849
Pte Russell H.C. at 0200 hrs 5 Dec 44. The
second is a certificate under Sec of apprehension
Sec of K49849 Pte Russell H.C.
~~N.D. 83 (5) has been complied with~~
The court admits the documents as Evidence
& makes them Exhibits "D" & "E" respectively

The prosecution is closed

The defense submits that a prima facia
case has not been made by the prosecution
on the grounds that although the unit
was in a theatre of operations, it was at
the time of the charge, resting in Ghent.

and not in action against the enemy.
@ Rfn Russell was not warned for duty
in the

The Prosecution submits that regarding the
first point – this does not enter into the picture.
They were on an operational theatre & the
fact that the unit was at rest does not
alter the law as being in the charge.
Due to the method of framing the charge we
cannot prove that Russell was warned to
be on that parade but have evidence that
Russells duty was to be in or around his
quarters & was not there ~~I~~ ~~[illegible]~~ ~~It~~
Under AA sec 15 (1) it states that absence
or essential element of desertion
~~Extract the charge may be proved~~, was not
"from the place where it is his duty to be, and
where he ought to be found if wanted".

~~RP 15th has been completed~~
The Court does not allow the submission
on the grounds that at least a case of "absence
without leave" has been established.

Re Case for the Defence

8

1st Witness for Defence.

K 49849 Rfm Russell J.C. sworn, states.
I am K 49849 Rfm Russell J.C. of 1 Sec
17 Pl "B" Coy R Wpg Rifles. I joined the
army Feb 3rd 1943 at the age of 19. I joined
a Bty H.A. Regt. Shortly after I was posted
to England when I became an Aircraft
Recog instructor. I held that position
for about 8 mons. The Regt was called
to Active Service in ~~June~~ and I was left
behind as an instructor. I was told in
April that I would be transferred to
Infantry. I did not like this as I wanted
to stay with the Regt H.A. At the end
of June I was sent to Dorset as an
infantry man where I joined the R Wpg
Rifles. I had tried before to get back to
the H.A. but as I could not transfer out
of the infantry I thought I might as

well stick it out. I have been with it a R.W.K from the time of Conquest to the Scheldt pocket with the line company.

Cross-examined by Prosecutor.

I went absent because I wanted to get back to England & see my girl friend. One English soldier had told me it was easy to get there & back by plane. In England I stayed with my girlfriend [illegible] & then went with her to Barrow for [illegible]. I had the intention of coming back but I knew a charge of absence without leave would be laid against me. I intended to get to Manchester & give myself up. I had tried to fly back once but was unable to manage it. I flew to England with the American Air Force. They did not know we were on the plane until it was in the air as we had stowed away. After the plane took off

we showed ourselves to the engineer. He was the only one who knew we were on the plane.

Examined by Court

We tried to get a ride back after we had been away for about 16 days. He arranged that we landed at Tidbinbilla to get back from war. Near Grantham. I was not with him when a police constable came over & apprehended me.

R.I. 83(B) has been complied with.

IMMEDIATE.

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

PART 1.

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

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

Instructions for the Guidance of the Police.

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

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

* Stations of Units and Depots are shown in the Monthly Army List.

† NOTE.—Special instructions apply in war for the disposal of absentees and deserters from the Army, who surrender to the civil police; *e.g.*, such personnel will be taken over from the civil authorities by the O.C. the nearest military unit or the O.C. Troops of the nearest military station. (A.C.I. 169/1940).

(22743) W1.32503/121 25,000 10/42 A.S.E.W.L.td. Gp.698
(23660) W1.68526/1269 40,000 2/43 " " Forms/O.1617/13

I CERTIFY that the man whose personal description is given below surrendered himself to* P.C.525 Wearden

at Ramsbottom at (hour) 22.00 on the 5th day of December 1944 as being No. K49849

(Rank and Name) Rifleman Russell. L. C.
Royal Winnipeg Rifles,

a deserter (or absentee without leave) from Ghent, Belgium.

and it appears to me from his confession that he is a deserter or absentee without leave.

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

Age 20 Height 5 Feet 6½ Inches

Complexion Fresh Hair Brown

Eyes Brown

Marks Small scar on forehead.

In uniform or plain clothes Uniform.

Probable Date and Place of Attestation	1-2-43, Vancouver, B.C.
Probable Date of Desertion or beginning of absence, and from what place	6th November, 1944. Ghent, Belgium.

Robert Kirkpatrick P.S. 463.

Signature of Officer of Police in charge of Ramsbottom Station.

5th December 1944 Date of Signature.

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

PART 2.

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

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

The refund of expenses incurred by the Police applies *only* in the case of the Police Authorities in Northern Ireland, the Isle of Man and the Counties of Orkney and Shetland.

Statement of Expenses chargeable to Army or Air Force Funds

incurred by the Police in the case

of No.

who surrendered to the Police at on

Payable to

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at

Date of Signature.

This is Exhibit "A" referred to in the Summary of Evidence in the case of K49849 Rfn RUSSELL, L.C., taken before me this 16th day of December 1944.

.....
Officer taking Summary

Expense Voucher Re— Ref: KR & O (Can) 539

8

Reg No. K 44849 Rank Rfmn Name Russell, L.C. Unit 1 C I T R

The following expenses were incurred in apprehending and returning the C.N Soldier to his ~~Unit from~~ London from Manchester

Date	Particulars (½ portion)	Amount £	s	d
6 Dec 44	Escorts return fare from LONDON To Manchester		14	2
	Prisoners single fare to LONDON From Manchester		14	2
	Prisoners fare from to			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares		7	0
	Total £	1	15	4

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

J A Thomson LIEUT.

J. A. THOMSON, Capt
Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London

OFFICER D.P.M's BR.
C. M. H. Q.

1/35 CMHQ 100-55
40/P & S/483 (6762)

This is Exhibit "B" referred to in the Summary of Evidence in the case of K49849 Rfn RUSSELL, L.C., taken before me this 16th day of December 1944.

8

.....
Officer taking Summary

ARMY FORM B 2067.

8

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
K49849	Rfn	RUSSELL, L C	R Wpg Rif

1. [redacted]

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

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

† See para. 677, K.R., 1940.

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

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

	* Within last 12 months.	*Since Enlistment.
For	times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

[redacted]

or

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

2. [redacted]

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

4. The accused has been in confinement, awaiting trial on the present charges, for no days in civil custody, and 14 days in military custody, making a total of 14½ days, of which no days were spent in hospital.

5. The present age of the accused according to his [redacted] attestation paper is 21 yrs

6. The date of his [redacted] attestation specified in his [redacted] attestation paper is 3 Feb 43

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 yr, 10 mos

8. The accused is entitled to deferred pay or gratuity in respect of 1 yrs, 10 mos service.

9. The accused is entitled to reckon 1 yr, 10 mos service for the purpose of determining his pension, etc.

10. [redacted] is in possession of or entitled to (*state any military decoration or reward*) Canadian Volunteer Service Medal and Clasp

11. [redacted]

12. [redacted]

(*21000) W1.34556/1781 20,000 10/43 A.& E.W.Ltd. Gp.698
(28808) W1.35854/1489 15,000 5/44 " "

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

No. K49849 Rank Rfn Name RUSSELL, L C of R Wpg Rif Regiment (or as the case may be).

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

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

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

Signed this 16th day of December 1944

(W F AITKEN) Capt.,
Adjt., R Wpg Rif

In the rank of , years,
In the rank of , years
In the rank of , years,

Date of Promotion.

13 [redacted]

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

No K49649 Name RUSSELL L C | Sqn. Battery or Company | Corps Infantry | Date of enlistment 3 Feb 43 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3438)

Company Conduct Sheet Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Certified True Copy of Original MFM 6					
				Officer having custody of Regimental documents					

(PTO)

Summary of Evidence in the case of K49849 Rfn Russell, L.C., 1st Battalion, Royal Winnipeg Rifles, a soldier of the Canadian Army, Overseas, charged with deserting His Majesty's Service. (AA Sec 12) (1).

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

1st Witness

H43054 Sgt Hrankowski, J., Royal Winnipeg Rifles, having been duly sworn states:-

On 7 Nov 44 I was Pl Sgt of 12 Pl, B Coy, R Wpg Rif. At that time K49849 Rfn Russell, L.C., the accused, whom I recognize, was a member of my pl. The Pl was billeted out in private houses. On the morning of 7 Nov 44 I instructed H9443 Cpl Goodall, J., to have his sec ready to move off at 1245 hrs. At about 1000 hrs Cpl Goodall reported to me that he was unable to find the accused at his billets. I sent him back about one and a half hours later to make a further search and he returned with the same reply. At 1245 hrs the pl was formed up and I called the roll and Russell was not present. At about 1300 hrs we received orders to load on vehicles. Rfn Russell was still absent and I reported the fact to the CSM. After this I did not hear of or see Rfn Russell until 15 Dec 44 when I was advised that he had been apprehended.

The accused declines to cross-examine this witness.

J. Hrankowski
.....
Signature of Witness

2nd Witness

H9443 L/Sgt Goodall, J., Royal Winnipeg Rifles, having been duly sworn states:-

On 7 Nov 44 I was a Cpl in charge of 8 Sec, 12 Pl, B Coy, R Wpg Rif. The accused, K49849 Rfn Russell, L.C., whom I recognize was in my sec. On the morning of 7 Nov 44 I was warned at breakfast time to prepare my sec for a move at 1245 hrs. I went around to the billets of my sec and warned them. I was unable to find the accused in his billets or in the area. I reported this fact to Sgt Hrankowski. I made a further check about one and a half hours later. I could not find the accused although his equipment was in the billet. The pl was paraded at 1245 hrs and the roll called. The accused was not present. I did not see or hear of the accused until 15 Dec 44 when I was informed that he had been apprehended.

The accused declines to cross-examine this witness.

J. Goodall
.....
Signature of Witness

3rd Witness

H17362 CSM Whitlock, B., Royal Winnipeg Rifles, having been duly sworn states:-

On 7 Nov 44 I was A/CSM of B Coy, R Wpg Rif. At 1300 hrs on 7 Nov 44 I formed up the coy and checked them for the number of men on parade. I was informed that K49849 Rfn Russell, L.C., the accused, whom I recognize was absent from 12 Pl. I have not seen or heard of him until 15 Dec 44 when I was advised he was apprehended.

The accused declines to cross-examine this witness.

B. Whitlock
.....
Signature of Witness

On Witness

Capt W. Brooks, Royal Winnipeg Rifles, having been duly sworn states:-

I am Capt W. Brooks, A/OC B Coy, R Wpg Rif. While in the city of Ghent, Belgium on 7 Nov 44, a parade was called and the men warned to be ready to proceed on operational duty. It was reported to me by CSM Whitlock that K49849 Rfn Russell, L.C., was absent. At that time I was 2 IC of B Coy and in due course reported the matter to the OC B Coy. It was well known that we were again going into action and everyone was present with the exception of K49849 Rfn Russell, L.C.

The accused declines to cross-examine this witness.

.....W. Brooks.....
Signature of Witness

The Certificate of Apprehension, (Army Form 01617), produced as documentary evidence, was read over to the accused, marked Exhibit "A", signed by me and attached hereto.

.....
Officer taking Summary

The Expense Voucher, (CMHQ 100:55), produced as documentary evidence, was read over to the accused, marked Exhibit "B", signed by me and attached hereto.

.....
Officer taking Summary

The accused was cautioned as follows:

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

Answer: I do not wish to make a statement.

The accused does not call any witnesses.

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

(G Richardson) Lt.,
R Wpg Rif

In the Field
16 Dec 44

I, K49849 Rfn Russell, L.C., Royal Winnipeg Rifles, request an officer to donduct my defence at Field General Court Martial, in connection with Charge Sheet dated 16 December 1944.

I desire the services of Lt R.M. Fortune, R Wpg Rif.

Signed. L.C. Russell L.C.

Witnessed. Capt Commanding Officer

Witnesses for the Prosecution:-

Capt	W. Brooks,		R Wpg Rif
H43054	Sgt	Hrankowski, J.,	R Wpg Rif
H17362	CSM	Whitlock, B.,	R Wpg Rif
H9443	L/Sgt	Goodall, J.,	R Wpg Rif

Witnesses for the Defence:-

The accused declines to summon witnesses for his defence.

List of Exhibits:-

Exhibit "A" - Certificate of Apprehension (AF 01617)
Exhibit "B" - Expense Voucher (CMHQ 100:55)

4S-136

Cpl. Russell L. F.

RECORDED AT CMHQ IN AB 160 45-136

FIELD GENERAL COURT-MARTIAL

CFAB6 (To face of AFA31) 40/P 10 8/1808 (40/51)

4/38B

Convened by Order of Brigadier K G Blackader Comd 1A CITB dated 2 Feb 45

DSO, MC, ED

ACCUSED.

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

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H-14087	Gnr		Leonard Frederick	RUSSELL	CIC 1 CITR

PROCEEDINGS REVIEWED

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) England on (*date(s)*) 6 Feby 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fms ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 895, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (are) amenable to military law, and each charge discloses an offence.(4)

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

A3. The Court is opened. The accused is (are) brought before the Court. At 1500 hours trial commences.

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

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

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

~~The Interpreter is sworn.(1)~~ Do you object to Sgt Pte Sgt Thornley 3756 as shorthand writer? Ans No The shorthand writer is sworn.(1)

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

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

Ans No Sir. (2)

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

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

President	LT-COL	D.M. REDMAN VD	HQ 1 CIB
Member	CAPT	A.A. BOURGEOIS	1 CITR
Member	LT	B.J. MACLEOD	3 CITR
~~Judge Advocate~~			
Prosecutor	LT	R.B. ALLAN	1 CITR
Defending Offr	LT	J. COWAN	1 CITR

Questions by President: Is the Prosecutor a lawyer? Ans YES Is the Defending Offr a lawyer? Ans YES (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dil p 33.)

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

PE form Record Sheets of Record

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

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. NO SIR (1)

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

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

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

D3. The evidence for the Prosecution is taken.(1) NOTE - AT (C).

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

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ~~charge(s), and~~ charge(s).(2) The Court is re-opened, and the President announces that the submission is closed, and considers the submission.(2) The Court is re-opened on the 12 allowed on the 12 that the submission is ~~disallowed on the~~ charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found ~~not~~ Guilty on the latter charge(s).(4)

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

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

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

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

Ans. NO SIR. Do you intend to call witnesses on your behalf?

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

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

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

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

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

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

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

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

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

Ans. NO SIR

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

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

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

E3. President to accused: Do you wish to address the Court on the Statements and Conduct Sheets, and in mitigation of punishment?(1) Ans. NOT AT PRESENT NOTE - ATT (2)

(1. RP 37(C), 40(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

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

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

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

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2122, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. NO - SIR (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

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

D3. The evidence for the Prosecution is taken.(1) NOTE-A11
(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

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

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

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. NO - SIR. Do you intend to call witnesses on your behalf? Ans. YES SIR

Ans. YES SIR. Are they witnesses as to character only? Ans. YES SIR (1)
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1) NOTE-A11
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 109(e).)

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

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. NO - SIR
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 532. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Req A of Offr NOTE-A11 (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

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

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566. Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(15), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

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

Accused: H-19057 Cpl Leonard Frederick RUSSELL - CIC - 1 CIWR

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p.2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 129 15(1)	NOT GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

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

N ~~At present under sentence~~ for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 19 days, of which NIL days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be Reduced to the Ranks and to forfeit all Ordinary Pay for a period of ninety (90) days.

(Sgd) ..... 6 Feb/45 (Sgd) [signature] President. (RP 45, 50.)
Judge-Advocate, if any. Date awarded.
(See back of Convening Order as to assembly and disposal of record after trial.)

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

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

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

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the findings and sentence of the Court but remit forfeiture of 45 days ordinary pay of the sentence.

~~I direct that the charge(s) be (re-)tried by ..... on alternative charge(s) ..... and further ordered~~
(1. AA 57A. Delete if not used.)

(Sgd) [signature]
(N G Blackader) Brig
Date 10 Feb 45 Commanding 13 Cdn Inf Trg Bde
Confirming Officer.

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

Accused.	Date.	Signature of Offr.
H-19057 Cpl Russell L.F.	15 Feb 45	[signature] Lt-Col (J.D.Forin) A/Commander 1 cdn. Inf. Trg. Regt

Promulgated in Part II DO 38 d/16 Feb 45.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CHARGE SHEET

The accused, H19057 Corporal Leonard Frederick Russell, Canadian Infantry Corps, on the strength of 1 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
SECTION 15(1)
ARMY ACT

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

In that he,

In the Field, absented himself without leave from 2359 hours on the first day of December 1944 until surrendering himself at 2215 hours on the 17th day of January 1945.

TOTAL ABSENCE: 48 days 22 hours 16 minutes.

C.B. Ware Colonel,
(C.B. Ware) Commander,
1 Cdn Infantry Training Regiment

In the Field.
26th day of January 1945.

To be tried by Field General Court Martial.

H.B. Blackader
(H.B. Blackader) Brig
Comd
16 Cdn Inf Trg Bde

In the Field
3 Feb 45

FIELD GENERAL COURT-MARTIAL

CFA50 (In lieu of AFA51)
40/PAM/1007 (2868)

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H-19087	Cpl		Leonard Frederick	RUSSELL	CIC 1 CITR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 5 Feb 45 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

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

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

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

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

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt Col	D L REDMAN, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by Commanding Officer	1 CITR
Lieutenant	to be detailed by Commanding Officer	3 CITR

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Captain	to be detailed by Commanding Officer	1 CITR

JUDGE-ADVOCATE.

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

On Active Service in the Fd

in England (Country.)

Date 5 Feb 45

K Blackader (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

(K G Blackader)

Commanding 16 Cdn Inf Bde Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined

No. H.19.057 Sgt. Russell L.F.

of D.A. Ch. of S. and in my opinion he

is ~~unfit~~ fit to undergo Trial by Court Martial.

Station 301 C.I.T.R.

Date 6.7.45

Lieut. R.B. Collins Lost.
Medical Officer

CASE OF

H.19057 Cpl. RUSSELL. L.F. 1 CITR.

PROSECUTION

The Prosecutor presented a certified true extract from a Part II Order of No.1 CITR, Order No.14 dated 19 Jan 45. (Extract marked exhibit 1 by Court).

PROSECUTION CLOSED

SUBMISSION BY DEFENCE

The Dfg Offr said - "I submit that the Prosecution have not satisfied the onus of proving the charge beyond a reasonable doubt, or sufficiently to warrant a conviction by this Court. If the Court decides there is sufficient evidence, then it must be that many officers and generals in the Canadian Army are missing an opportunity to obtain evidence to convict soldiers where the ordinary evidence is not available. If you convict, there is then no reason why a Part II Order should not be the only evidence on any absence without leave charge before this Court, no matter when the absence occurred or when the Part II Order was published. The special privilege of having a Part II Order as evidence was never intended to be a method by which evidence could be manufactured against an accused person, and if you convict on the present charge that will be the result of your decision. I submit that there should be evidence before this Court that the accused was on the strength of a Coy or Plt and was absent from a roll call or parade and that he could not be found in the camp and that he continued to be absent until the date stated in the charge."

PROSECUTION'S REPLY

The Prosecutor said - "I would like to refer the Court to O.R.O. 5352 made lawful by P.C.8563 (Prosecutor reads). I submit first of all that the paragraph referred to in rule 497 of K.R.(Can) is overridden by that P.C. Order and secondly I submit that if it is not authority the Court must take into consideration the exigencies of the service in that K.R.(Can). Rule 497 was made up to be used in peace time and it is necessary, due to the exigencies of the service in such a case as this and many other case it is quite impossible for Records Office of Trg Regts to receive information to publish in Orders on that day which is laid down in rule 497 of K.R.(Can). I submit therefore that the evidence is admissable and that a prima facie case is made out."

COURT WAS CLOSED TO CONSIDER THE SUBMISSION.
COURT RE-OPENED AND DISALLOWED SUBMISSION.

FIRST CHARACTER WITNESS FOR DEFENCE

Lt. J.Dickson, Asst. Tpt Offr, 1 CGRU being duly sworn states:

Q. Do you recognize the accused?
A. I recognize the accused.

Q. How long have you known him?
A. Since Sept 43.

Q. What was your job in relation to his?
A. He joined the Camerons and came to us in 1943. He was a Cpl. Driver Mechanic. I was Pln Comdr.

Q. How long were you Pln Comdr?
A. From first week in Mar 44 until I was wounded in France 20 Jul 44.

Q. What work did the accused do for you at that time?
A. Just previous to that he was made a L/Sgt and given command of a section. He worked with me with that rank and gave excellent service.

Q. What can you say in regard to his ability and character?
A. With regard to his ability, on his trade he would have no difficulty holding his work anywhere. With regard to his character I would say he is of very good character, he was never on Orders and I don't remember ever having to check Cpl. Russell.

Q. Would you say that he is a man of exemplary character?
A. Yes I think so.

Q. He is an excellent man on his job?
A. He is a very good man on his job.

NO CROSS-EXAMINATION
IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

SECOND CHARACTER WITNESS FOR DEFENCE

Lieut. ANDERSON of No.1 CGRU having been duly sworn states:

Q. Do you recognize the accused?
A. I recognize the accused.

Q. How long have you known the accused?
A. Since August 41 when he first came to the Camerons Carrying Plt.

Q. Will you tell the Court the work he did?
A. At the time Russel came to the Carrying Plt I was a Cpl. in the Plt and fortunately had Russell as a member to train. He worked very good and caused no trouble to anyone and at no time do I remember him being on Orders or checked for lack of discipline. He became an NCO and carried on and did a good job and when I left he was still doing a good job.

Q. What do you know about his character?
A. He has a very good character, he never beefed around amongst the men and was a good soldier.

Q. Was he trustworthy?
A. Very, when he was given a job to do he did it.

Q. When did you leave the unit?
A. In May 44.

Q. What rank was the accused then?
A. He was a L/Sgt at that time.

NO CROSS-EXAMINATION
IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

DFG. OFFR. SAID - "I submit to the Court a certified true extracts of all entries pertaining to changes of rank and wounds from the MFM.2 which I obtain from Records Office, CMHQ regarding the accused." (Extract marked exhibit 2 by Court)

PROSECUTION ADDRESSES THE COURT ON THE FINDINGS.

"I have nothing further to say in addition to what I have said on the submission."

DFG OFFR ADDRESSES THE COURT ON THE FINDINGS.

I submit again that the original evidence, exhibit 1, by the Prosecution is not admissable in that it states that Cpl. Russell was absent without leave from 2359 hrs 1 Dec 44. We have evidence that he was an A/Sgt on 13 Sep 44 on which date he was wounded and in accordance with ORO 4668, Para.12 (READS).

I submit that at the time referred to in Part II Orders time had not elapsed and at that time the accused was an A/Sgt as well as on the 8th day. It is up to the RU to take action to do away with acting ranks as well as other entries and any error or oversight must be mentioned in that Part II Order. It is ruled by law that if you are going to prove evidence by producing documents that you must have special record made and must comply with the statute strictly. You cannot make an error of

of any sort and still take advantage of that statute which gives the Prosecution the right to produce Part II Order. In that regard we have a case I know of which has been decided on that question by our Cdn Court Martial in this country and I know that the Court will be able to find record of that case although I have not got it with me. I submit again that the Prosecution have not proven their case, first on the ground that the Part II Order did not contain the proper entries and in accordance with G.R.O.5352. If you are going to make use of a Part II Order you must comply strictly with the law and see that it is correct."

COURT IS CLOSED.TO CONSIDER THE FINDING.

COURT RE-OPENED.

"B" OTHER RANKS

18. ABSENTEES

(a) Ret'd from AWL w e f times and dates shown:

H.19057 Cpl. RUSSELL L.F. 2215 hrs 17 Jan 45

(b) Absent from times and dates shown:

H.19057 Cpl. RUSSELL L.F. 2359 hrs 1 Dec 44

(f) Absent from 2359 hrs 1 Dec 44.
Still absent 2359 hrs 9 Dec 44 (8th day).

H.19057 Cpl. RUSSELL L.F.

(g) Absent from 2359 hrs 1 Dec 44.
Still absent 2359 22 Dec 44 (21st day).

H.19057 Cpl. RUSSELL L.F.

(Signed) B.J. Mothersill, Major
for Col C.B.Ware, Comd,
1 Cdn Inf Trg Regiment.

Certified true extract from the original now in my possession.

Capt.
(J.H. Galloway) Record Officer,
1 Cdn Inf Training Regiment.
26 Jan 45.

EXHIBIT A
P.A.Q.

EX 1
MM

Regimental No. H.19057 Rank A/Sgt. Sheet No.

MFM 1 & 2a
40/F & S/119 (4291)

Name RUSSELL. Leonard Frederick.

Record of Promotions, Reductions, Transfers, Casualties, Reports, etc—	Rank Shown	Effective Date	Unit	Place	Authority	
					HQ Number	Dated
T.C.S Camerons of Canada	Pte	5 Sep 39	Cam.of C.	Wpg	2	5 Sep 39
Appt'd A/Cpl	A/Cpl	1 Aug 43	Cam.of C.	U.K.	41	7 Aug 43
Confirmed Cpl.	Cpl	1 Nov 43	Cam.of C.	U.K.	56	17 Nov 43
Appt'd A/L/Sgt	A/L/Sgt	9 Feb 44	Cam.of C.	U.K.	8	25 Feb 44
To be L/Sgt	L/Sgt	9 May 44	COCH	U.K.	23	16 Jun 44
To be A/Sgt.	A/Sgt	18 Aug 44	Cam.of C.	21 A.Grp.	39	31 Aug 44
Wounded		13 Sep 44		A.E.F.	A.491	

CERTIFIED TRUE EXTRACTS OF ALL ENTRIES PERTAINING TO CHANGES OF RANK AND WOUNDS FROM THE M.F.M. 2 IN MY CUSTODY RELATING TO NO. H.19057 A/SGT. RUSSELL. Leonard Frederick.

5 Feb 45

(C.E. DESMOS) Capt.,
Officer having custody of documents
RECORDS OFFICE C.M.H.Q.

Ext 2
Wds

M.F.B. 355
22M—5-41 (572-5)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H 19057	Cpl.	Russell L.Y.	

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

	Within last 12 months	Since enlistment or appointment
For AA Sec 15(1)	(One) time	times
For	times	times
For	times	times
For	times	times

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

~~or~~

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

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

2. The accused has not been previously convicted

~~or~~

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

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

~~or~~

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

4. The accused has been in confinement awaiting trial on the present charges, for 20 days in civil custody, and 19 days in ~~Air Force~~ military custody, making a total of 19 days in custody, of which 20 days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 24 yrs.

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 5 Sep 39.

7. The service which the accused is allowed to reckon towards discharge is 5 yrs 146 days.

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

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

Cdn Vol Service Medal & Clasp.
1939-43 Star.

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

ET RB
RM

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

dated , and in his regiment (or corps), the rank of

dated .

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

Date of promotion.

In the rank of A/Cpl. ~~3 yrs. years~~ 1 Aug 43

In the rank of Cpl. ~~3 yrs. years~~ 9 days 1 Nov 43

In the rank of A/L/Sgt ~~3 yrs. years~~ 9 26 43
L/Sgt ~~3 yrs. 9 26 43~~ A/Sgt 4 yrs. 18 Aug 44

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

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number R190677 Rank Cpl. Unit

Name RUSSELL, L F of 1 CITR Regiment

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

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

N.L

Certified from N.Y.M.2.

6 Jun 45 St James'. Lieut.

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

Capt.

Signed this day of January 1946 (J.H.Galloway) Record Officer
1 CITR

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

Regimental No. H-19007 Rank

Sheet No. 4

Name RUSSELL L.F

Record of Promotions, Reductions, Transfers, Casualties, Reports, etc.	Rank Shown	Effective Date	Unit	Place	Authority: DO Number	Authority: Dated
AA Sc 1st Awarded severe reprimand - Forf 1 days pay	A/Sgt	31 Dec 44	4 C.G.H.	ICK	44	31 Dec 44

Certified true copy M.F.M. 6

6 Jan 45

C Y C

NG

PLEA IN MITIGATION

This is a case in which the excellent record of the accused should be given the greatest of consideration. He enlisted before war was declared Canada declared war & he enlisted on 5 Sept 39. He came overseas in December 1940, and fought at Dieppe with the Camerons in August 1942. He went to France with his regiment on 7 July 44, and served there until he was wounded on 13 Sept 44. He is now willing and anxious to return as soon as possible to the Queen's Own Cameron Highlanders in France, the regiment he has been with continuously since September 1939 about

Today for crime of the prisoner

This court has heard the evidence of Lt. Dickson, his platoon commander until he himself was wounded last July, and the evidence of Lt. Anderson who was in the same platoon as the accused for some four years. They could hardly give better testimony about anyone, than the excellent recommendation they gave the accused to-day. He is an honest, trustworthy man with a first class record and a first class character.

The accused is a qualified to operate flame throwers, he is a qualified driver mechanic and a qualified carrier man with over three years experience in a carrier platoon and two years

experience in a rifle company. He is anxious to return to his unit at the earliest possible moment and I submit he should be allowed to do so. This capable man with his long service will serve the Canadian Army best, not in detention or as a private, but in action as an N. C. O.

SUMMARY OF EVIDENCE

In the case of H190857 Corporal Leonard Frederick Russell, Canadian Infantry Corps, on the strength of 1 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas.

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

FIRST WITNESS FOR THE PROSECUTION

Lt F.L. Dunbar having been duly sworn, states:
I am Lt F.L.Dunbar, on the strength of 1 CITR. I produce certified true extract from 1 CITR Part II Daily Order No. 14 dated 19 Jan 45 purporting to be signed by Major B.J. Mothersill. This document relates to the accused and is marked Exhibit "A" and initialled byme for purposes of identification.

The accused declines to cross-examine this witness.

F.L. Dunbar
(F.L. Dunbar) Lt.

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on oath? You are not obliged to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

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

R.B. Allan Lt.
(R.B. Allan) Officer detailed to take the Summary of Evidence.

In the Field.
27th day of January 1945

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at 1 CITR, In the Field, preliminary to my trial by Court Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court Martial.

Signed at 1 CITR
In the Field
this 30th day
of Jan 1945

L. J. Russell

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

I ~~desire the services of~~ _____ ~~if he is available~~.

LIST OF EXHIBITS IN THE CASE
OF
H19057Cpl Russell, L.F., Canadian Infantry Corps,

EXHIBIT "A" - Certified true extracts from 1 CITR Part II Order No.14 dated 19 Jan 45.

LIST OF WITNESSES IN THE CASE
OF
H19057 Cpl Russell, L.F., Canadian Infantry Corps.

FIRST WITNESS FOR THE PROSECUTION	Lt F.L. Dunbar	1 CITR

84 T

REGIMENTAL DOCUMENTS

H.Q. FILE No. .....

NAME Pte RUSSELL L T ..... REGIMENTAL No. .....

UNIT OF ENLISTMENT ..... RANK .....

	CONTENTS	NON-EFFECTIVE BY
	COMBINED DECLARATION FORM OR ATTESTATION AND MEDICAL HISTORY (M.F.M.1 & 1A) OR (M.F.M.2 & 2A)	DEATH
	SERVICE AND CASUALTY FORM (M.F.M.4 & 4A) (A.F.B.103)	DATE
	PARTICULARS OF FAMILY (M.F.M.5)	CAUSE
	FIELD CONDUCT SHEET (M.F.M.6) (A.F.B.122)	AUTHORITY
	CERTIFICATE OF SERVICE (M.F.M.8) COPY OF, OR DISCHARGE CERTIFICATE (M.F.M.7) COPY OF	
	FORM OF WILL (M.F.M.10 OR M.F.M.10A)	
	DENTAL HISTORY SHEET	DISCHARGE
	MEDICAL REPORT OR CASE HISTORY SHEET	DATE
	MEDICAL EXAMINATION ON LEAVING THE SERVICE	REASON
	TRANSFER CLOTHING STATEMENT	AUTHORITY
	LAST PAY CERTIFICATE (M.F.D.930A)	
	PROCEEDINGS ON DISCHARGE	
	PROCEEDINGS COURT OF ENQUIRY	DESERTION
	DECLARATIONS COURT OF ENQUIRY	DATE
	PAY SHEETS	AUTHORITY
	CARDS	
	SUNDRY	

M.F.W.2589

Correspondence to be PINNED here.

845

Army Form A.3.

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

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this Sixteenth day of JUNE, 19 42.

Whereas it appears to me, the undersigned, an officer in Command of 5 Canadian Infantry Brigade Group Canadian Army (A.F.), on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

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

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

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

* Omit if not applicable.

*I am unable to appoint —

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

*(2. A Field Officer as President.)

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

for the following reasons, namely: In my opinion, military exigencies, namely the dispersion of units, difficulties of communication, and other difficulties, render it inexpedient to comply with those rules incon-sistent to Appendix "A" to D.A.O. 7/42 on the trial of the soldier named in the margin.

President.

Rank.	Name.	Regiment.
MAJOR	T. B. Donald	Calg Hldrs

Members.

Rank.	Name.	Regiment.
Captain	P. Savoy,	Pus M R
Lieut.	H. B. Gourlay,	Sigs 2 Cdn Div.

Remaining 6 officers (as per O.A.O. 5) cf. #9 10.7.42

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

*Signed G. W. Whitehead (G. W. Whitehead) Brigadier
Commanding 5 Cdn Inf Bde Group

Convening Officer.

2

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B75793, Pte. Leslie James Russell, Ter Sect R.(WG), a soldier of the Cdn Army (A.F.) is charged with	FIRST CHARGE A.A.40c. 15(1) Absenting himself without leave (See charge sheet attached)	Guilty	Guilty	To undergo 60 days detention T.B.Donald Maj 22/6/42. Confirmed G.W.

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

(Signed) G.W. Whitehead (G.W. Whitehead) Brigadier, (Signed) Thos B Donald Maj
Commanding 5 Cdn Inf Bde Group *Convening Officer* (e) *President.*

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

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

3

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 22nd day of June 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

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

* Omit if not applicable.

were duly sworn.

Signed this 22nd day of June 1942

Thos B. Donald Majr
President of the Court Martial.

C. Certificate in case of death sentences.

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

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

Signed this day of 19

President of the Court Martial.

D. Confirmation.

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

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

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

Signed this 27 day of June 1942

G.W. Whitehead Brig.
Confirming Officer.

Promulgated and extracts taken in the case of B 75 193 Pte. Russell, L.J.

(a) (Dated) 29 JUNE 42 (Signed) G.McDale Lieut. A/Adj.
THE TORONTO SCOTTISH REGT. (M.G.) C.A.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

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

MEDICAL OFFICER'S CERTIFICATE

This is to certify that - B75793 Pte. Russel, L. J. has been examined by me this date and found fit to undergo a FIELD GENERAL COURT MARTIAL.

(J. J. Milner), Captain, R.C.A.M.C.
Medical Officer att'd Tor Regt H (MD)

DATE 22 June /42

Y132

CHARGE SHEET

The accused, B.75793, Pte. Leslie James RUSSELL, Tor Scot R (MG), a soldier of the Canadian Army (A.F.) is charged with:

A.A. SEC. 15(1). ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the field absented himself without leave from 2356 hrs 16 May 42 until 2330 hrs 5 Jun 42.

TIME ABSENT 19 days 23 hrs 31 mins.

(G.S.M. Gostling) Lt.-Col,
Comd - Tor Scot R (MG),
C.A.C.

Prosecuting officer. Hr. J. H. Depew } For. Dist R.

Defending " " Hr R. T. Cornell

1 675793 Pte Russell, Leslie James Inv Scot R
22 June 42

2 Maj D B Donald Calg Highrs
Capt P Janey 2 i/c R
Lieut H B Gourley Legs & Con Dis

3 Hon Lieut J H H Degen lawyer Inv Scot R
Def Lieut W J Connick — Inv Scot R

4 — Guilty —

5 R.P 35(B) complied with

6 Summary read

7 AFB 296 & M.F.M.C filed

8 Russell in England since Nov 1939. Take McEachern statements accounts

9 675708 Sgt McEachern, Elmer, Edwin Inv Scot R
Pte Russell has been ~~not~~ in my platoon for 6 months. Have known for 2½ years - a good soldier. Has never been on B Coy

Cross-ex by Hon
Q Has there been any time on or off parade when he has not been a good soldier
A No

Evidence about record read & explained.
Dated 27th June 1942
D B Donald Major

ABSTRACT OF EVIDENCE IN THE CASE OF

B.75793, Pte. Leslie James RUSSELL, Tor Scot R (MG), a soldier in the Canadian Army (A.F.)

FIRST WITNESS. B.75598, Cpl. Graham, T.R., Tor Scot R (MG), will say:

Sir, at Toat Farm Camp on 16 May 42 I was Coy Ord Cpl. Pte. Russell failed to report in and hand me his midnight pass before 2359 hrs 16 May 42, so I marked him absent as from that time. I did not see him again until 9 Jun 42.

SECOND WITNESS. Owing to the exigencies of the service it is found impossible to produce D 11636 Spl. Yates, S.E., Pro Cpl of No. 1 C.A.S.S.U., but a certificate of surrender concerning this case is attached as appendix "A".

The accused, B.75793, Pte. Russell, L.J., having been duly warned in accordance with R.P. 4(5) declined to make a statement.

TAKEN DOWN BEFORE ME IN THE PRESENCE AND HEARING OF THE ACCUSED THIS 11 DAY OF JUNE 1942.

(D.J. Wilkins) Capt.,
A/Adjt-Tor Scot R (MG)
C.A.C.

No. B.75793 Name Russell L.V. Sqn., Battery or Company B Corps Tpr Sgt R (MG) Date of enlistment 9-9-39 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.B. 122)

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Tournay	14-3-40	Pte		Sec 15 A.W.L. 3 days 14 hrs	Sgt McKenna L-C Curlo	96 hrs detn	19-3-40	Lt-Col Christie	(pay for 4 days
Tournay	26-4-40	"		Sec 15 A.W.L. 26 hrs	Sgt Forbes L-C McLachern	14 days C.B.	29-4-40	Maj.McCreary	Forf.2 days pay
Tournay	29-5-40	"	1	Sec 19 Drunkenness	Sgt Heath Cpl Deegan	admonished	31-5-40	Maj.McCreary	
Dorsley	31-7-40	"		Sec 15 A.W.L. 2 hrs 15 mins	Cpl Mackie L-C Granger	3 days C.B.	1-8-40	Capt.Page	
Dorsley	2-8-40	"		Sec 15 A.W.L. 13 hrs 10 mins	Sgt.Forbes L-C Granger	7 days F.P.	2-8-40	Capt.Page	Forf. 6 days pay
Aldershot	3-4-41	"	V	Sec 19 Drunkenness	Documentary evidence	Fined £2.50	21-4-41	Maj.McCreary	
Aldershot	23-6-41	"		Sec 15(1)a.w.l. 4 days 18 hrs	Sgt.MacRae	28 days detn	19-7-41	Lt-Col Christie	F.P. 21 days pay

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Hadlow	25-1-42	Pte		#1 Sec 15 A.W.L. 16 hrs #2 Sec 40 Neglecting to do a duty	Sgt.Forbes Cpl.Keller	21 days F.F. forfs. 1 days pay	27-1-42	Maj.Northey	

Certified true copy

D Hunting
Capt

(Substitute for A.F.B. 296)
(or M.F.B. 286.)

STATEMENT OF CIRCUMSTANCES AND PARTICULARS OF SERVICE OF THE ACCUSED:

No. B.75793 Name Russel J. Unit Tor. Boot. R' (MG)CA(O)

Age 36 Married or Single Married No. of Dependents I

DATE OF ATTESTATION 9 Sept 39

No. of Days spent in Close Arrest (To Date of Trial)

CIVIL _____ MILITARY 16 days. MUNICIPAL _____

TOTAL 16 days.

DATES OF PROMOTIONS, APPOINTMENTS AND CONTINUATIONS OF RANK, IF ANY:

D. Mackenzie
(C.S.M. Gostling), Lt. Col.
Comd. - Tor Boot R (MG)
C.A.O.

DATED THIS 22 June 42

STATION: In the Field.

(To be signed and dated as of date of Trial).

Z-122

PTE RUSSELL L.J.

Correspondence to be PINNED here.

2-122

Army Form A.8.

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

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 8th day of March, 1943

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

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

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

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

*~~I am unable to appoint~~

~~1.—Three Officers to form the Court;~~

~~2.—A Field Officer as President;~~

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

* Omit if not applicable.

14 Mar 43

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

President.

Rank.	Name.	Regiment.
Major	L.W.F. Wakefield	"B" Inf Bn

Members.

Rank.	Name.	Regiment.
One Lieutenant to be detailed by C.O. "B" Inf Bn		
One Lieutenant to be detailed by C.O. "A" Inf Bn		

Waiting member:

One Lieutenant to be detailed by C.O. "A" Inf Bn

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

*Signed H. Rudder Basher Colonel,

Commanding "X" Inf Bde.

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
The accused, B 75793 Private Leslie James RUSSELL, 1st Battalion Tor Scot R (MG), a soldier of the Canadian Army Overseas; is charged with:-	1st Charge: A.A. Sec. 15(1) Absenting himself without leave in that he in the field, on 21 Feb 43, absented himself without leave from 0700 hrs 21 Feb 43 to 2300 hrs 2 Mar 43.	Guilty	Guilty 90 Days. Detention A.H.S. Wakefield Lt-Col 9/3/43	I confirm the finding and sentence of the Court. G. Macy Basher Colonel Comdg X Inf Bde.

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

Reply (to be recorded on separate sheet if necessary) :—

(Signed) G. Macy Basher Colonel (Signed) A.H.S. Wakefield Lt-Col

Commanding "X" Inf Bde *Convening Officer* (*e*) *President.*

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

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

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

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

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

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

B. Certificate of President as to proceedings.

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

I also certify that :—

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

were duly sworn.

* Omit if not applicable.

Signed this Ninth day of March 1943.

A.H.S. Wakefield Lt-Col
President of the Court Martial.

C. Certificate in case of death sentences.

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

~~I certify that the terms of *A.C.I. 570 of 11/ 8 have been complied with.~~

~~Signed this day of 19 .~~

President of the Court Martial.

D. Confirmation.

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

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

Signed this 9th day of March 1943

G. Macy Basher Colonel
Confirming Officer.

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

Promulgated and extracts taken in the case of B 75793 Pte. Leslie James Russell.

(*a*) (Dated) 10 Mar. 43 (Signed) R.K. Templeton Lt.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

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

W. 47767/1857 50 M. 5/41 K.(L.S.D.)2 Gp. 698/3

CHARGE SHEET

The accused, B.75795 Private Leslie James RUSSELL, Tor Scot R (MG), a soldier of the Canadian Army Overseas; is charged with:-

FIRST CHARGE
A.A. SEC.15(1) ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the field on 21 Feb 43, absented himself without leave from 0700 hrs. 21 Feb. 43 to 2300 hrs. 2 Mar. 43.

ABSENT 9 days, 16 hours.

W. Court.

(F. W. Court), Major,
A/T/Comd - Tor Scot R (MG)
C.A.O.

Date - 2 Mar 43

To be tried by Field General Court Martial.

In the Field

8 Mar 43

Col
Commanding "X" Inf Bde

9/3/43

I wish a Defending Officer

I desire the services of Lieut. S.R. Smith if he is available.

L. J. Russell
(L. J. Russell), Pte.

In the Field
6 Mar 43.

MEDICAL CERTIFICATE (K. R. (Can)557)

I certify that I have this morning examined No. B75793

Pte RUSSELL L.J. of TORONTO Scottish Regt and in my opinion

he is fit to undergo trial by Court Martial

unfit

Station - In the Field

Date 9 Mar 43

F J McInnes Capt

Medical Officer

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

A

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

Proceedings of a Field General Court-Martial held at in Field
on the 9 day of March 19 43 by order of
Col. G.H. Basher Commanding × "Infantry Brigade
dated the day of 19

President.
Major L. W.F. Wakefield "B" Inf. Bn.

Members.
Lieut. O.H. Trace "A" Inf. Bn
~~Lieut. A.H. Mc Millan "B" Inf Bn~~

~~, Judge Advocate~~

Trial of* B75193 Pte. Russell, L.J.

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

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

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

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

The accused is brought before the Court.

Prosecutor,† Lieut. J.A.P. Depew, Jor. Scot (MG)

~~Counsel~~, or defending officer† Lieut. L.W. Mc Lean

At 1155 o'clock the Trial commences.

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

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

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

Answer by accused. Yes Sir

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

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

Mil. Form B. 271
10M—8-41 (1319)
H.Q. 1772-39-214

B

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

The following officers under instruction are duly sworn.

Lieut. W. A. Strickland, 5th Scot. Regt. (M. G.)
" F. L. Mitchell, " " "

Charge-Sheet

Instruction. *If the accused has elected to be tried under Army Act, sec. 56 (8) the fact should be here recorded.*

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

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

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

Guilty Sir *Answer.*

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

N/A *Answer.*

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

N/A *Answer.*

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

N/A *Answer.*

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

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

CC

Proceedings on Plea of Guilty

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

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

The accused B 75793 Pte Russell, L.F.
is found guilty of the charge

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

D75876 Cpl Lucken, L.F. was called by the Court and under oath stated that the accused has not appeared on parade or Roll Call during the morning period between 0700 hrs 15th July until 2000 hrs 2nd March 1942.

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

Answer. The Defending Officer

~~The accused~~ in mitigation of punishment ~~says~~:— referred to accused's character and states that his AWL charge was directly due to his drinking habits and this should be born in mind by the Court when passing sentence. The AWL was punishable [or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

Instruction.

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

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

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

Question to the accused.

Answer.

Evidence as to character.

SUMMARY OF EVIDENCE

In the case of B.75793 Private Leslie James RUSSELL, Tor Scot R (MG), a soldier in the Canadian Army Overseas:-

The accused is informed of his Rights.

The accused does not demand and the C.O. does not direct the evidence be taken on oath.

FIRST WITNESS for the prosecution: B.75886 Cpl. Wilken, E.J. states:-

At 0700 hrs. 21 Feb 43 I called the Roll in No. 8 Pl, of which the accused is a member. He was absent.

The accused declines to cross-examine. Cpl. E.J. Wilken

SECOND WITNESS for the prosecution: B.76572 Sgt. Bayes, J.V. states:-

I was Gd Comd on the night of 2 - 3 Mar 43. The accused reported to me at 2300 hrs. sober and properly dressed.

The accused declines to cross-examine.

.....J.V. Bayes. Sgt...
(J.V. Bayes), Sgt.

The accused, having been duly cautioned in accordance with R.P 4(2), says:

"I do not wish to make a statement".

.....L.J. Russell.....
(L. J. Russell).

The accused does not wish to call witnesses in his defence at this point.

CERTIFIED THAT R.P. 4 complied with.

9/3/43 J.F.A. McAlpine
Major

In the Field
5 March 1943

R.K. Templeton
(R. K. Templeton), Lieut.
A/Adjt - Tor Scot R (MG)
C.A.S.

E

Finding

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

The Court closed for the consideration of the finding.

The Court find that the accused is guilty as charged.

Proceedings on Conviction *before Sentence*

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

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

Evidence of character, &c.

Lieut. J. H. H. Lepper, Gov. Scot. is duly sworn.—

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* I produce AFB 296 and extract true copy of M.P.M. 6

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

Question by the President.

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

Question.

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

Question.

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

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

Cross-examined by the accused.

Question to the accused.

Do you wish to address the Court? *Answer.* None

The Court is closed for the consideration of the sentence.

F

Sentence

The Court sentence the accused See Schedule

Sentence.

Certified true Copy-4 Mar 43

No. B75795 Name Russell, L.J. Sqn., Battery, or Company "B" Corps Toronto Scottish Regiment (MG) Date of enlistment 9 Sep 39 G.C. Badges Service or Proficiency Pay Character

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Tourney Bks	14Mar40	Pte		A.A. Sec 15(1) 3 days 14 hrs	Sgt McKenna F L/C Carlo J	96 hrs pet	19Mar40	Lt-Col JH Christie	Forf 4 days pay RAI 149(1)(a)
"	26Apr40	"		A.A. Sec 15(1) 26 hrs	Sgt Forbes W L/C Fetherston F	14 days C.B.	29Apr40	Major GD Feeney	Forf 7 days pay RAI 149(1)(a)
"	29May40	"	(1)	A.A. Sec 19 DRUNKENNESS	Sgt Heath Cpl Deegan	Admonished	31May40	Major GD Feeney	
Horsley	31Jul40	"		A.A. Sec 15(1) 2 hrs, 15 mins	Cpl MacRae RSM Granger, H	3 days C.B.	1 Aug40	Capt J.J. Page	
"	2Sep40	"		A.A. Sec 15 (1) 18 hrs 10 mins	Sgt. Forbes. RSM Granger	7 days F.P.	2 Sep40	Capt. J.J. Page	Forf 6 day pay RAI 149(1)(a)
Aldershot	9Apr41	"	(2)	A.A. Sec 19 DRUNKENNESS	Documentary	Fined $2.50	21Apr41	Major G.D. Feeney	
"	8Jun41	"		A.A. Sec 15(1) 20 days 18 hrs	Sgt MacRae A	28 days pet	19Jul41	Lt-col JH Christie	Forf 21 dy pay RAI 149(1)(a)

9/4/43 [illegible] Replaced

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Fielu	25Jan42	Pte		A.A. Sec 15(1) 16 hrs	Sgt Forbes W Cpl Keiller A	21 days FP	27 Jan 42	Lt Jn Northey	Forf 1 days pay AR 14(1)(a)
Field	17May42	"		A.A. Sec 40 Neglecting duty A.A. Sec 15(1) 10days 2h hrs and 41 mins	Sgt Forbes W Cpl Graham J Documentary	60 days Det	28 Jun42	F.C.C.M.	Forf 60 days pay A.R. 14(1)(a)(A) For 16 days pay AR 14(1)(a)(ii)
						Released from detention per sent'd sentence having expired. Remission earned under 'Rules fro Detention in Military Prisons' 18 days Commandent's Initials 'C.M.'			
Field	27 Sep42	Pte		A.A. Sec 15(1) 1h hrs 30 mins	Cpl McAuley F	Admonished	29 Sep42	Lt-Col W.M. Dowling	Forf 1 days pay AR 14(1)(a)

No. B75793 Name Russell, L.J. Sqn., Battery, or Company "B" Corps Toronto Scottish Regiment (MG) Date of enlistment 9 Sep 39 G.C. Badges Service Proficiency Pay Certified True Copy-4 Mar 43

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	9 Jan43	Pte		A.A. Sec 15(1) 8 days 16 hrs	Sgt Forbes Cpl Walker Documentary	14 days C.B. Forf 9 days pay AR 104(2)	28 Jan 43	Major R.G. Johnson	Forf 9 days pay CRAI 140(1)(a)
Field	30 Jan43	Pte		A.A. Sec 11 Gambling in hut	Sgt. Robertson H.J.	Forf 8 days pay CRAI 140(2)	2 Feb43	Major R.G. Johnson	
				A.A. Sec 11 Lights on in hut after time for 'Lights Out'					

9/3/43 L.J.R. Withheld Received

(PTO)

(Substitute for AFB 295 or MFB 355.

STATEMENT OF CHARACTER AND PARTICULARS OF SERVICE OF THE ACCUSED:

No. 875793 Name ROSSELL L J Unit TOR SCOTS.

Age 36 Married or Single MARRIED No. of Dependents 1.

DATE OF ATTESTATION Dec 9TH 1939.

No. of days in close arrest (To date of Trial)

CIVIL —— MILITARY 7. HOSPITAL ——

TOTAL 7.

DATES OF PROMOTIONS, APPOINTMENTS AND CONFIRMATIONS OF RANK, IF ANY:-

A CERTIFIED TRUE COPY OF M.F.M. 6 MUST ACCOMPANY THIS FORM.

W. Lamb Major

A/T/ Comd The TOR SCOT R (M.G.)

DATED THIS 9 Mar 43

9/3/43 [illegible] Major

Station: In the Field

(To be signed and dated as of date of trial

11 K

REGIMENTAL DOCUMENTS

H.Q. FILE No. .....

NAME Pte (A/Cpl) RUSSELL L W ..... REGIMENTAL No. .....

UNIT OF ENLISTMENT ..... RANK .....

	CONTENTS	NON-EFFECTIVE BY
	COMBINED DECLARATION FORM OR ATTESTATION AND MEDICAL HISTORY (M.F.M.1 & 1A) OR (M.F.M.2 & 2A)	DEATH
	SERVICE AND CASUALTY FORM (M.F.M.4 & 4A) (A.F.B.103)	DATE
	PARTICULARS OF FAMILY (M.F.M.5)	CAUSE
	FIELD CONDUCT SHEET (M.F.M.6) (A.F.B.122)	AUTHORITY
	CERTIFICATE OF SERVICE (M.F.M.8) COPY OF, OR DISCHARGE CERTIFICATE (M.F.M.7) COPY OF	
	FORM OF WILL (M.F.M.10 OR M.F.M.10A)	
	DENTAL HISTORY SHEET	DISCHARGE
	MEDICAL REPORT OR CASE HISTORY SHEET	DATE
	MEDICAL EXAMINATION ON LEAVING THE SERVICE	REASON
	TRANSFER CLOTHING STATEMENT	AUTHORITY
	LAST PAY CERTIFICATE (M.F.D.930A)	
	PROCEEDINGS ON DISCHARGE	
	PROCEEDINGS COURT OF ENQUIRY	DESERTION
	DECLARATIONS COURT OF ENQUIRY	DATE
	PAY SHEETS	AUTHORITY
	CARDS	
	SUNDRY	

M.F.W.2564
10/P & S/1115

-6/Russell, L./7
B 84897 Pte. (A/U/Cpl.) Russell, L. T.
R. C. A. S. C. posted to Cdn. Trng. School

11K

Army Form A.3.

Correspondence to be PINNED here.

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

PROCEEDINGS.

A.

On Active Service, this thirtieth day of JUNE, 1942. Order convening the Court.

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

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

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

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

*[I am unable to appoint

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

*(2. A Field Officer as President.)

for the following reasons, namely:—]

* Omit if not applicable.

PROCEEDINGS REVIEWED. H.Q. Canadian Army Overseas (A.G.) No. 8 20 Jul. 42

JUDGE ADVOCATE

Lieut. G.M. Morrison, N.N.S.H. H.Q., Cdn Reinf. Units.

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

President.

Rank.	Name.	Regiment.
Major	H. H. Miller	10 Non Div Ord. R/S RCOC

Members.

Rank.	Name.	Regiment.
Capt	T. J. Warner	#1 Cdn Ord R. U. RCOC
Lieut.	D. I. Angus	10 Non Div Ord. R/S RCOC
WAITING MEMBER Lieut	R. A. Packman	#1 Cdn Ord R. U. RCOC

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

*Signed (C. P. A RICHARDSON) Brig.

Commanding H. Q., "H" Gp. Cdn Reinf. Units
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B 84897 Pte. (A/U/Cpl) Russell, L. A. R. C. A. S. C. posted to C.T.S.	First Charge A. A. Sec. 15(1)	Not Guilty	Guilty	Finding and Sentence Confirmed but Sentence varied to read: To undergo detention for one(1) day.
	Second Charge A. A. Sec. 19	Not Guilty	Guilty	
	Third Charge A. A. Sec. 40	Not Guilty	Not Guilty To undergo Detention for one(1) day to be reduced to Reprimand Bftn. 2 July 42	

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

(Signed) J. P. ARCHAMBAULT, Brigadier. (Signed) B.H. Russell Major
Commanding "F" Group, Commanding Cdn. Reinforcement Units. Convening Officer (*e*)
E.A. Cameron Lt. President

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

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

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

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

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

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

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 2 day of July 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

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

were duly sworn.

* Omit if not applicable.

Signed this 2 day of July 1942

B.H. Russell Major
President of the Court Martial.

C. Certificate in case of death sentences.

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

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

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

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

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

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

Signed this 9th day of July 1942

J. P. ARCHAMBAULT, Brigadier.
Commanding "F" Group,
Confirming Officer
Cdn. Reinforcement Units.

Promulgated and extracts taken in the case of

(*a*) (Dated) 9 July 42. (Signed) C.C. Drury Col.
COMMANDANT,
CANADIAN
TRAINING SCHOOL

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

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

[84] Wt. 38092-1316 70m 2/41 W. & Co., Ltd. Gp. 763-2

CHARGE SHEET

The accused, B.84897, Pte. (A/U/Cpl.) Russell, Louis Willington, Royal Canadian Army Service Corps, posted to the Canadian Training School, a soldier of the Canadian Army Overseas, is charged with, when on Active Service -

First Charge
A. A. Sec. 15(1)

Absenting himself without leave

in that he

at Chobham Ranges, Surrey, on 16 June 42, did absent himself from place of duty appointed by his superior officer from approximately 1315 hours to 1330 hours.

Second Charge
A. A. Sec. 19

Drunkenness

in that he

at Chobham Ranges, Surrey, at approximately 1545 hours on 16 June 42, was drunk,

or - in the alternative

Third Charge
A. A. Sec. 40
Alternative

Conduct to the prejudice of good order and military discipline

in that he

at approximately 1545 hours on 16 June 42. was unfit for duty by reason of previous indulgence in alcoholic stimulants.

(C.M. Bovey) Colonel, L.d. S.H.,
Commandant, Canadian Training School.

Bordon, Hants.,
22 June, 1942.

To be tried by Field General Court Martial

Bordon, Hants
30 June 1942

J. P. ARCHAMBAULT, Brigadier.
Commanding 4th Group,
Can. Reinforcement Units.

2 July, 1942.

I certify that No. B.84897 - Pte. (A/U/Cpl.) Russell, L. W.
is fit to undergo trial by Court-Martial.

(G. S. Long), Capt.
R.C.A.M.C.

Major
President.

No. B-84897, Pte. (A/U/Cpl) RUSSELL, L.W., R.C.A.S.C., posted to Cdn TG School, tried by Field General Court Martial at BORDON, Hants. on 2 Jul 42.

The order convening the Court, the charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor: Lt. W.A. Murray, C.I.S.
Defending Officer: Lt. W.A. Dalrymple, C.I.S.

At 1010 hrs the trial commences.

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

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

Q1. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A1. No, sir.

The President, members and judge advocate are duly sworn.

The officers under instruction are duly sworn.

Q2. Do you object to Boo944, Sgt. T. Pyburn (R.Regt.C.), H.Q., C.M.U., acting as shorthand writer?
A2. No, sir.

The shorthand writer is duly sworn.

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

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

Q3. Are you guilty or not guilty of the first charge against you, which you have heard read?
A3. Not Guilty.
Q4. Are you guilty or not guilty of the second charge against you, which you have heard read?
A4. Not Guilty.
Q5. Are you guilty or not guilty of the third charge against you, which you have heard read?
A5. Not Guilty.

Q6. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?
A6. No, sir.

The prosecutor makes no opening address.

No. B-84897, Pte. (A/U/Cpl) RUSSELL, L.W., M.C.A.S.C., posted to Cdn Tg School, tried by Field General Court Martial at BORDON, Hants. on 2 Jul 42.

The order convening the Court, the charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor: Lt. W.A. Murray, C.I.S.
Defending Officer: Lt. W.A. Dalrymple, C.I.S.

At 1010 hrs the trial commences.

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

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

Q1. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A1. No, sir.

The President, members and judge advocate are duly sworn.

The officers under instruction are duly sworn.

Q2. Do you object to Bpo944, Sgt. T. Pyburn (R.Regt.C.), H.Q., C.M.U., acting as shorthand writer?
A2. No, sir.

The shorthand writer is duly sworn.

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

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

Q3. Are you guilty or not guilty of the first charge against you, which you have heard read?
A3. Not Guilty.
Q4. Are you guilty or not guilty of the second charge against you, which you have heard read?
A4. Not Guilty.
Q5. Are you guilty or not guilty of the third charge against you, which you have heard read?
A5. Not Guilty.

Q6. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?
A6. No, sir.

The prosecutor makes no opening address.

1st witness) for prosecution) CAPT. E. McINTIRE, R.C.A., posted to Cdn Tg School, being duly sworn, is examined by the prosecutor:-

The witness identifies himself.

Q7. What is your position in this school?
A7. I am O.C. of the sub-wing for mortars.
Q8. Are you posted to C.T.S.?
A8. I am.
Q9. On 16 Jun 42 were you i/c of a party going to Chobham Ranges?
A9. I was.
Q10. Will you tell the court what time you arrived there?
A10. Roughly about half past 9, but I am not sure of the exact time.
Q11. What time approx did the party leave there?
A11. About 3 o'clock, shortly after 3.
Q12. During that time, between 9.30 and 3 o'clock, was anything reported to you in regard to the drivers or the trucks which had transported your party?
A12. One of my Sgts asked me if I had given permission for the drivers to leave the area and take away one of the trucks.
Q13. Which Sgt was that?
A13. Sgt Hosegood.
Q14. What did you do when that was reported to you?
A14. At that stage I didn't do anything except speak to the Sgt-Major and I told him I wanted to see those men when they came back; that was Sgt-Major Schmitz.
Q15. What happened next?
A15. I didn't myself see them go out, and I didn't see them returning because there was a bldg blocking my view, but I did see later on the truck drive out for what I take to be the second time. I didn't see it come in, but I saw a truck drive out.
Q16. What about the drivers?
A16. The two drivers were missing; I investigated that myself. At the time I saw this truck go out it had already been reported to me one truck and the two drivers were missing. I didn't see them come in, but I saw them go out.
Q17. At the time when you went over, at the time of the second going out of the truck, what time approx was it when you personally investigated the matter?
A17. I imagine about half past 2.
Q18. How long to your knowledge were those drivers missing?
A18. I didn't see them myself from lunch time, until that time, from shortly after 12 until then.
Q19. Who were the drivers?
A19. Cpl Russell and Pte Hill.
Q20. Were there any other drivers with the party?
A20. No, just those two.
Q21. When next did you see the drivers?
A21. When they pulled out a third time; once again I didn't see them come in because I was conducting a mortar firing course, and the second time I distinctly saw both drivers, and Cpl Russell was driving with Pte Hill sitting beside him.
Q22. Which truck were they driving?
A22. Pte Hill's truck.
Q23. How did you identify it as Pte Hill's truck?
A23. Because I myself took the work ticket afterwards and marked one, which was Cpl Russell's truck, which I was driving, and I myself at that stage had removed the key of Cpl Russell's truck so it could not be taken out.
Q24. Is that the work ticket (producing document?)
A24. Yes sir, that is the work ticket of the truck they had out, but not the truck of which I had the key.

EXHIBIT A - Work Ticket.

Q27. Later on, previous to going home, did you again see the drivers?
A27. As soon as they came back, the next time I happened to see

them come in, the last time, and CSM Sommitz placed both drivers under arrest for being AWL and for taking a truck without permission.

Q28. When did you last see them yourself?

A28. I didn't see them until we were ready to come home, roughly I would say about 3 o'clock.

Q29. Explain the circumstances under which you saw them?

A29. When I went to the trucks Cpl Russell and Pte Hill had the heads off Cpl Russell's truck and were doing something at the wires inside. I asked them what the trouble was and he stated the truck was out of commission and would have to be towed home. On asking Cpl Russell why it was out of commission he simply stated it would not work, and I then mentioned the fact we had the key which I thought would be necessary before the truck was driven. Previous to that Cpl Russell had the key. We put the key in the truck but it would not start owing to the switch wires being disconnected by Cpl Russell. I myself put them back in place, myself.

Q30. Now we have come to the point where the incident of the key being missing took place and so on. You were ready for the party to go home?

A30. I was.

Q31. What was the condition of the two drivers? Did you allow them to drive?

A31. The condition of the two drivers, they were both unsteady on their feet and slurred in their speech, and I considered them unfit to drive and ordered them into the back and ordered Sgt Hopgood, who was a licensed driver, to drive one and I drove the other one myself.

Q32. In your opinion, was Cpl Russell drunk?

A32. (No reply).

J.A.: I think if he would tell their condition it is up to the court to determine whether they were drunk or not; what they were doing and so on, and how behaving.

WITNESS: They were not behaving in a sensible manner. Cpl Russell did not seem to know exactly what he was trying to do with the truck. He didn't realise all that was wrong with the truck was he didn't have the ignition key. He had lost one of the nuts, it dropped on the ground underneath and he didn't have the sense to go and pick it up. He definitely smelt of liquor, was definitely unsteady on his feet, and his speech was slurred.

133. J.A.: Was his speech incoherent?

33. I would say so, yes sir.

CROSS EXAMINATION BY DEFENDING OFFICER

4. You stated you saw Cpl Russell driving the lorry out the second or third time it left?

. At the time I saw him drive out was the third time.

. He was driving the lorry himself at that time?

. Definitely.

. Was the lorry being driven reasonably safe at the time?

That is a very difficult question to answer, because owing to this bldg blocking the view I could only see that truck for a matter of 10 or 15 yds before it disappeared behind the trees.

Did you hear any crashing of gears?

No.

And he did take it and bring it back in without causing any damage to the lorry?

s far as I am aware, yes.

id he go through any trees?

ie exit from the ranges turns to the left behind some ushes and trees and you cannot see it then.

them come in, the last time, and CSM Schmitz placed both drivers under arrest for being AWL and for taking a truck without permission.

Q28. When did you last see them yourself?
A28. I didn't see them until we were ready to come home, roughly I would say about 3 o'clock.
Q29. Explain the circumstances under which you saw them?
A29. When I went to the trucks Cpl Russell and Pte Hill had the heads off Cpl Russell's truck and were doing something at the wires inside. I asked them what the trouble was and he stated the truck was out of commission and would have to be towed home. On asking Cpl Russell why it was out of commission he simply stated it would not work, and I then mentioned the fact we had the key which I thought would be necessary before the truck was driven. Previous to that Cpl Russell stated he had lost the key. I then pointed out that the CSM had the key. We put the key in the truck but it would not start owing to the switch wires being disconnected by Cpl Russell. I myself put them back in place, myself.
Q30. Now we have come to the point where the incident of the key being missing took place and so on. You were ready for the party to go home?
A30. I was.
Q31. What was the condition of the two drivers? Did you allow them to drive?
A31. The condition of the two drivers, they were both unsteady on their feet and slurred in their speech, and I considered them unfit to drive and ordered them into the back and ordered Sgt Rosewood, who was a licensed driver, to drive one and I drove the other one myself.
Q32. In your opinion, was Cpl Russell drunk?
A32. (No reply).

J.A.: I think if he would tell their condition it is up to the court to determine whether they were drunk or not; what they were doing and so on, and how behaving.

WITNESS: They were not behaving in a sensible manner. Cpl Russell did not seem to know exactly what he was trying to do with the truck. He didn't realise all that was wrong with the truck was he didn't have the ignition key. He had lost one of the nuts, it dropped on the ground underneath and he didn't have the sense to go and pick it up. He definitely smelt of liquor, was definitely unsteady on his feet, and his speech was slurred.

Q33. J.A.: Was his speech incoherent?
A33. I would say so, yes sir.

CROSS EXAMINATION BY DEFENDING OFFICER

Q34. You stated you saw Cpl Russell driving the lorry out the second or third time it left?
A34. At the time I saw him drive out was the third time.
Q35. He was driving the lorry himself at that time?
A35. Definitely.
Q36. Was the lorry being driven reasonably safe at the time?
A36. That is a very difficult question to answer, because owing to this bldg blocking the view I could only see that truck for a matter of 10 or 15 yds before it disappeared behind the trees.
Q37. Did you hear any crashing of gears?
A37. No.
Q38. And he did take it and bring it back in without causing any damage to the lorry?
A38. As far as I am aware, yes.
Q39. Did he go through any trees?
A39. The exit from the ranges turns to the left behind some bushes and trees and you cannot see it then.

Q40. There is considerable turning to do to get out of the ranges?
A40. One turn, that is all.
Q41. Then if there was no crashing of gears and no marks on the lorry, it must have been driven reasonably?
A41. It was driven without being smashed, I can say that, but I didn't see it driven except for that matter of 10 yds or so.

Q42. J.A.: The first charge is for absenting himself from the place of duty appointed by his superior officer at Chobham Ranges, Surrey on 16 Jun 42. Were you his superior officer at that date?
A42. Yes, sir.
Q43. Did you appoint a place of duty for him?
A43. They were detailed to take us to the ranges and wait there and bring us back.
Q44. Detailed by you?
A44. Detailed by 2 Wing; they belong to a different Wing.
Q45. And for being absent from 1315 hrs to 1330 hrs; do you know whether or not the accused was absent during that time?
A45. I would not like to set down a definite time, but they were definitely absent. During the second period of absence I myself went to investigate and found only the one vehicle and that was the time I am sure I removed the key from it, that would be approx around 2 o'clock.

Q46. THE COURT: Can you state definitely that the accused left the vehicle to which he was detailed?
A46. Oh, yes sir, otherwise I would not have been able to remove the key; I am positive of that, sir.
Q47. I understand the second occasion on which this vehicle was removed, I believe you stated it was approx 2.30 and there was a later time or a third time you saw it go but you did not see it come back?.
A47. Only the last time, that is all. I simply saw the truck disappearing out. There were a lot of trucks and a lot of carriers going by at the time, and hearing an engine start up, you didn't pay any particular attention to it. Between lunch time, from 12 to half past 12 I saw them, but I didn't actually see the drivers themselves, only the last time they took the truck out. The first time they went out I simply inferred they had gone out but I didn't know when.
Q48. Their noon meal was - ?
A48. 12 to 1 at the ranges.
Q49. Was proper provision made for it?
A49. Yes, lunch consisted of sandwiches and cake, and one of these 2-gal jars of tea was supplied.

Q50. PROSECUTION: Finally, just before returning, you had Cpl Russell and Pte Hill placed under arrest?
A50. Yes, sir.
Q51. Am I right in saying the main reason for doing this was that you felt neither of them ---

J.A. This is not cross-examination. You had better not suggest the answer to the witness.

Q52. In your opinion was Cpl Russell unfit to entrust a vehicle with, and if he was so unfit what was the reason?
A52. In my opinion the reason was he had been drinking and I did not consider him fit to take charge of the vehicle.

Q53. THE COURT: Do you know where they got anything to drink?
A53. No sir, I don't know that neighbourhood very well.
Q54. You don't know positively where they got it or whether they had it with them?
A54. In answering that am I allowed to use previous evidence given by the witnesses themselves when they were remanded for court martial?

PROSECUTOR: That will be brought out in evidence, sir.

Q55. THE COURT: You at first hand don't know that they had anything with them?
A55. No sir, I didn't see them partaking of liquor and I have no way of saying they went into a certain place to have a drink or had it with them.

2nd witness) No. P-22228, C.S.M. (W.O.II) J.H. SCHMITZ,
for) PPCLI, posted to C.T.S., being duly sworn, is
prosecution) examined by the prosecutor:-

The witness identifies himself.

Q56. What are your duties?
A56. I am Sub-Wing Sgt-Major of the 3 in. mortar, No. 3 Wing, CTS.
Q57. On 16 Jun you were at Chopham Ranges with a party under the command of Capt. McIntyre, is that right?
A57. Yes, sir.
Q58. Was any report turned in to you by any of your AI's concerning the accused, Cpl Russell and the other driver, Pte Hill?
A58. Not by one of the AI's.

Q59. J.A.: As a result of some information he need he probably did something.

Q60. PROSECUTOR: Did you receive any instructions from Capt McIntyre regarding the two drivers?
A60. Yes, sir, that when the truck came back to place the drivers under arrest.
Q61. When did the truck come back?
A61. I could not state the time.
Q62. When the drivers did come back did you place them under arrest?
A62. No, sir.
Q63. What were the drivers doing at that time, when they came back?
A63. When they came back I was told by Capt McIntyre to place them under arrest, but before I could do so they had pulled out again, and when they came back that time I placed them under open arrest, and then they were working on the truck; they had the hood off and were working on the wires of the ignition, I believe.
Q64. Earlier on, had you been with Capt McIntyre at the truck park?
A64. No, sir.
Q65. Did Capt McIntyre give you the key of the truck at any time?
A65. Yes, sir.
Q66. When was that?
A66. About approx 2.30.
Q67. But you weren't with him when he got the key of the truck?
A67. No, sir.
Q68. When the two men were finally working on the wires of the truck you were with Capt McIntyre, when you went to the truck park?
A68. Yes, sir.
Q69. What happened then?
A69. We asked Cpl Russell what he was doing and he said the truck was out of commission and would have to be towed home. Capt McIntyre and I walked to the side of the truck and looked in and noticed no key in it, and Capt McIntyre asked if the truck wouldn't work better with the key in the switch, and Cpl Russell said he had lost the key, so Capt McIntyre told him to put the wires back and he started the truck.
Q70. Did Capt McIntyre give you any further orders regarding Cpl Russell?
A70. He told Cpl Russell he would see the trucks were driven home and to give him his work ticket.
Q71. Did Cpl Russell do so?
A71. Yes, after some hesitation.
Q72. What do you mean by "some hesitation?"
A72. A short pause of two or three mins.
Q73. Was there any reason for that?
A73. Not that I know of, sir.

Q74. Would you have felt safe with Cpl Russell driving you in the condition he was in?
A74. Not knowing him before I would say No, he was a strange driver to me.
Q75. What was Cpl Russell's condition at the time?
A75. I would say he was unfit to carry out his duties as a driver.
Q76. Why?
A76. In my opinion due to previous indulgence in alcohol.

CROSS EXAMINATION BY DEFENDING OFFICER

Q77. You said you were there at the lorry when Cpl Russell was working inside the hood?
A77. Yes, sir.
Q78. Cpl Russell put those wires back on again, did he?
A78. Yes, sir.
Q79. Are you sure it was Cpl Russell and not Capt McIntyre?
A79. Capt McIntyre told Cpl Russell to put the wires on and Cpl Russell put the wires on or held the wire up to make contact to start up the motor and he picked up a screw and dropped it.
Q80. But Cpl Russell did put the wires on satisfactorily so that the truck would work?
A80. I am not sure whether it was him or Capt McIntyre, but Cpl Russell put the wires in their proper place but dropped a screw and bent down to pick it up.
Q81. You saw the lorry driving out?
A81. Yes, sir.
Q82. How was it being driven?
A82. There was only a short distance, about 15 yds or so, where you could actually see it, and the truck would have to be driven in low gear to get out to the road.
Q83. Did it appear to be driven satisfactorily for that distance?
A83. Except when they got to the road, there is a bank of 3 or 4 ft and they stopped there and had to come down again.
Q84. That could happen with anyone driving?
A84. Yes, sir.
Q85. You say you would not feel safe driving with Cpl Russell because you didn't know him previously, is that right?
A85. Yes.
Q86. In other words, if you had known him previously you might have had a different opinion?
A86. Yes, sir.

Q87. J.A.: What exactly was the accused's condition at the time he was working around the car?
A87. Slightly unsteady on his feet.
Q88. Was he staggering?
A88. No, sir.
Q89. What signs of alcohol were there about him?
A89. When he was standing on the bumper of the engine he slipped once.
Q90. Could you smell any liquor?
A90. No sir, I was not close enough to smell it.
Q91. How about his conversation?
A91. His conversation seemed steady enough to me.
Q92. Did he talk intelligently?
Q93. I actually was not talking to him, sir.
Q94. Then you would not know anything about his conversation?
A94. No, sir.
Q95. Do you know whether he had any instructions as to what to do with his vehicle that day while at the ranges?
A95. No sir, I don't know anything of that.

Q96. DEFENCE: The witness said he was not actually conversing with Cpl Russell. I believe he stated previously he placed him under open arrest, being told to do so by Capt McIntyre.

Q97. J.A.: When placing the accused under open arrest did you have any conversation with him?
A97. No, sir.

Q98. THE COURT: You simply told him he was under open arrest?
A98. Yes, sir.
Q99. Did you visit the car park at any time when Cpl Russell was not there?
A99. No, sir.
Q100. Did you visit the car park at any time when he was there?
A100. No sir, except the last time.

3rd witness for prosecution) No. H-16162, SGT. J.B. HOSEGOOD, PPCLI, posted to C.T.S., being duly sworn, is examined by the prosecutor:-

Witness identifies himself.

Q101. What is your position?
A101. A.I. instructor, No 3 Wing of 3 in. mortar.
Q102. On 1n Jun 42 were you with a party at Chobham Ranges under the command of Capt McIntyre?
A102. I was.
Q103. During the day did you have any occasion to go to the truck park, and what did you find there?
A103. Just after one o'clock I went to the truck park to get my small pack from one of the trucks. The truck with the small pack in it was missing.
Q104. What did you do then?
A104. Reported it to Capt McIntyre.
Q105. When did you next go to the truck park?
A105. The next time was when we were getting ready to pack up and leave.
Q106. Did you see the accused, Cpl Russell?
A106. Yes, I did.
Q107. What was he doing?
A107. At the time standing up on the bumper of the Chev truck and doing something to the wiring inside the engine hood.
Q108. What was his condition?
A108. I could not say very well, but he seemed to be unsteady on his feet.
Q109. Were you put i/c of one of the trucks by Capt McIntyre?
A109. Yes sir, i/c of the Ford V-8.
Q110. Did you see the work ticket of that truck?
A110. I did.
Q111. Is this the work ticket (Ex A)?
A111. That is the one.
Q112. It is not completely made out, is it?
A112. No, sir.
Q113. Are there any figures on the front or back which indicate the mileage covered?
A113. It is shown on the back. It was 4621 I took the truck at. On taking the same route back the mileage was 4641.
Q114. What was the original mileage?
A114. It was 4596 when the truck was taken out.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q115. Did you see these lorries moving at all other than on the way home?
A115. I did.
Q116. While at the ranges?
A116. Yes, sir.
Q117. Did you see Cpl Russell driving a lorry at all?
A117. I could not state that, but I did see them moving.
Q118. In what way were they moving, properly or not?
A118. In one spot they were moving toward the main road and it was not exactly the way out for a truck, and they went up on a kind of sharp slope to the road and then had to stop and try to take it again.
Q119. Did whoever was handling the vehicle seem to drive it with more or less reasonable assurance?
A119. Not by the sound of the motor; he seemed to be speeding up too much.

Q120. Were you a licensed driver at that time?
A120. Yes, sir.
Q121. I mean at the time you were at the ranges?
A121. Yes, sir.

Q122. COURT: How long have you had your license?
A122. The license was given to me when I was with the M.G. Hldg Unit.
Q123. How long ago was it given to you?
A123. In the summer of 40.

Q124. J.A.: Were you or not a licensed driver on 16 Jun 42?
A124. Yes, sir.

Q125. COURT: Did you have any conversation with Cpl Russell at all?
A125. No, sir.
Q126. Did you see him driving the truck?
A126. No, sir.
Q127. When you went for your pack you did not find it?
A127. No sir, I didn't.
Q128. Was your pack in Cpl Russell's truck or in the other truck?
A128. It was in Cpl Russell's truck when I left it and the truck that had my pack in it was missing.
Q129. Then the one you drove back was not Cpl Russell's truck?
A129. No, sir.
Q130. Were both drivers missing when you went to look for your pack?
A130. Yes, sir.

The prosecution is closed.

Q131. J.A.: Do you apply to give evidence yourself as a witness?
A131. Yes, sir.

R.P. 40 & 41 duly complied with.

Q132. Do you intend to call any other witness in your defence?
A132. DEFENDING OFFICER: Witnesses as far as the defence is concerned are few and far between, owing to the prosecution's witnesses being practically all the people who were there. The only other people were the two drivers themselves, so all I can do is call the accused himself and the other driver and a mechanic.

1st witness) for the defence) No. B-84897, PTE. (A/U/CPL) L.W. RUSSELL, RCASC, posted to C.T.S., being duly sworn, is examined by the defending officer:-

The Accused identifies himself.

Q133. When Capt McIntyre and the others came to the car park they found you working inside the hood, is that right?
A133. Yes, sir.
Q134. You stated you had lost the key, is that right?
A134. Yes, sir. I was connecting up the wires on the switch to start the truck, because I thought I had lost my key.
Q135. Do you take the key out of a vehicle usually?
A135. No sir, because it is very seldom I drive that truck; my own vehicle has a stationary key.
Q136. You usually take the key out of the car, do you?

J.A.: That is a leading question.

A136. No, sir.
Q137. What do you usually do with a vehicle that has a key in it when you leave it?
A137. Usually take it out.
Q138. What did you think had happened to the key?
A138. I thought I had lost it.
Q139. Did you take the lorry at any time and go and get a drink?
A139. No, sir.

COURT: You have two questions in one there.

Q140. DEFENCE: Did you take the lorry out at any time?
A140. Yes, sir.
Q141. What was your reason for taking it out?
A141. The first time I took my own vehicle out on account of the distributor being set so far ahead it had no power on the hills, and I took it out to see if it was all right when I set it back; I was out approx 5 mins.
Q142. Did you take the other lorry out?
A142. Yes, I took the other lorry out which Pte Hill was driving. He complained to Sgt-Major Schmitz on the way down that the steering was very stiff and I took it out to see if he was right, which he was.
Q143. Was there any difficulty driving when you had them out?
A143. No, sir.
Q144. Did you have anything to drink from the time you took the lorry out until the time Capt McIntyre and the Sgt-Major placed you under open arrest?
A144. I had nothing to drink while out with the trucks, sir.

CROSS EXAMINED BY THE PROSECUTOR

Q145. When you took Pte Hill's truck out, approx how far did you go and how long were you out?
A145. I was out approx 10 mins in Pte Hill's truck.
Q146. How far did you go in that time?
A146. Approx a mile and a quarter.
Q147. Did you have anything to drink during the day?
A147. Yes, sir.
Q148. When was that, and where was it?
A148. In the noon hour.
Q149. Where was that?
A149. I don't know just where it is, but at a pub.
Q150. And what did you have to drink?
A150. I was drinking beer.
Q151. Approx how much?
A151. Approx 2 pts.
Q152. What did Pte Hill have?
A152. He was drinking whisky and beer.
Q153. This was previous to your taking the trucks out?
A153. Yes, sir.
Q154. Did you seek any permission to take them out?
A154. No sir, I figured they needed testing, that is all.
Q155. In spite of the fact you were away from Bks and were under command of Capt McIntyre for the day, you simply took them out on your own?
A155. Yes, sir.
Q156. You were the senior driver there?
A156. Yes, sir.

Q157. J.A.: How did you get to the pub?
A157. We walked down from the range.
Q158. How far away was it?
A158. The pub I think, sir, is probably a mile and a half or a mile and three-quarters.
Q159. Were you there more than once?
A159. No sir, we just went down and came back in the noon hour, arriving back at approx one o'clock.
Q160. Did you walk back?
A160. Well, we hitched a ride.
Q161. How many times did you have one or the other of these vehicles out of the car park at the ranges?
A161. The truck I was driving I had it out once, and Pte Hill's truck was out twice.
Q162. Why did you take Pte Hill's truck out a second time?

A162. I came back for the tools out of my own truck because I could not get the tools from Pte Hill's truck because I had no key for the lock, and I was trying to adjust his steering, and I find out now you can't fix it the way it is fixed.
Q163. You took it out to test the steering?
A163. Yes, sir.
Q164. Then came back to get tools?
A164. Yes, sir.
Q165. And then what?
A165. I went out on the road.
Q166. Why?
A166. To adjust the steering.
Q167. Why could you not adjust the steering right where you were?
A167. It is better to do it on the road.
Q168. You have heard the evidence of Capt McIntyre about your being unsteady on your feet, incoherent speech and so on?
A168. Yes, sir.
Q169. Is that not true?
A169. I don't think so. I always did kind of stutter a bit at times, but I was not slurry in my speech, as he claims.
Q170. Were you unsteady on your feet?
A170. No, sir.
Q171. You were not?
A171. No, sir.

Q172. COURT: Are your tools kept locked?
A172. No sir, there are no locks on my truck as far as tools are concerned, but there is on the other truck.
Q173. The truck you were driving that particular day, there were keys for the ignition?
A173. Yes, sir.
Q174. Were there keys for the tool box?
A174. No sir, no locks on the tool box.

Q175. J.A.: What instructions did you have that morning in setting out?
A175. To take a party out to the range and bring them back in the afternoon, and we were told we would be there practically all day.

Q176. COURT: What is your trade, driver i/c or driver mechanic?
A176. No sir, just driver i/c, class 3.
Q177. Are you a driver mechanic?
A177. That is what I have in my pay book, I don't know, but on my license it just shows "Driver."
Q178. Are you drawing trades pay?
A178. No, sir.
Q179. What time did you return from the pub?
A179. At approx one o'clock.
Q180. What time did you take the truck out?
A180. Approx 10 mins after we arrived at the ranges.
Q181. What time did you take the truck out imaly after lunch?
A181. I was not there for lunch. I went to the pub.
Q182. Yes, I know, but you returned to the ranges, and then what time did you take the truck out?
A182. Between ten and a quarter after one.
Q183. In other words, a lapse of 10 or 15 mins?
A183. Yes, sir.
Q184. Did you eat any lunch?
A184. No, sir.

(Page 11 follows)

2nd witness) for) the defence)

No. B-892bb, PTE. S.J. HILL, RCASC, attached to C.W.S., being duly sworn, is examined by the defending officer:-

The witness identifies himself.

Q 185. Were you with the lorries that went to Chobham Ranges on the 10 Jun?
A185. Yes, sir.
Q186. You had a Ford V-8 at the time, did you?
A186. Yes, sir.
Q187. Did the accused at any time take that lorry out?
A187. Just to adjust the steering on it.
Q188. Did you go to a pub at any time?
A188. Do you mean with the lorry? No, sir.
Q189. Did you to a pub at any time, with or without the lorry?
A189. Yes, I did.
Q190. How did you get down?
A190. Walked down.
Q191. About how far is it?
A191. I would judge about a mile, possibly a mile and a half.
Q192. Did you walk back or ride back from the pub?
A192. I walked back.
Q193. Did you at any time take the lorries out to go to a pub or to get a drink anywhere?
A193. No.
Q194. Were you there when Cpl Russell was working on the motor or on the ignition of his own lorry?
A194. Yes, sir.
Q195. Did you know what he was trying to do at the time?
A195. I am not so sure. I think the timing was ahead or going a little too fast.
Q196. What did you have to drink?
A196. Beer and whisky.
Q197. What did Cpl Russell have?
A197. He was drinking beer.
Q198. He didn't have any whisky?
A198. Well, I wouldn't swear to that.
Q199. Were you very clear about what was happening at the time?
A199. No, I was not.

CROSS EXAMINED BY THE PROSECUTOR

Q200. In going to the pub, when you went there, did you have permission or did Cpl Russell have permission to go there?
A200. Not that I know of.
Q201. Did you or Cpl Russell have permission to take the trucks out later, when you did take them out?
A201. No, sir.
Q202. You seem somewhat hazy in some of your evidence. You don't completely remember the full details of that afternoon, do you?
A202. No, sir.

Q203. J.A.: How much did the accused have to drink?
A203. I don't know, sir.
Q204. How many times did you go to the pub?
A204. Just the once, sir.
Q205. Have you any idea how much he had to drink there?
A205. No, I have not, sir.
Q206. Were you with him all the time?
A206. Yes, sir.
Q207. Surely you must have some idea?
A207. I couldn't say, sir.

Q208. DEFENCE: Were you placed under close arrest at any time?
A208. Yes, when I returned.
Q209. Was Cpl Russell placed in open or close arrest?
A209. I couldn't say.

THE COURT:-
Q210. Were you charged with being drunk?
A210. Yes, sir.
Q211. Were you tried?
A211. Yes, sir.
Q212. Was the case dismissed?
A212. No sir, I got a $5.00 fine for being drunk.
Q213. How did you get back from the pub?
A213. I walked back.
Q214. All the way?
A214. Yes, sir.
Q215. Do you know that for a fact?
A215. I can't remember getting a ride at all.
Q216. Would you know if you did get a ride?
A216. Yes, I should do, sir. I don't remember us getting a ride or anything about that.
Q217. What time did you arrive at the pub?
A217. I don't know, sir.
Q218. Do you know what time you left the range?
A218. Approx around quarter to 11, or 10.30, about that.

Q219. J.A.: The accused was with you, was he, when you went to the pub?
A219. Yes, sir.

3rd witness for the defence) No. B45974, SGT. E.N. BIGLEY, RCASC, attached to C.T.S., being duly sworn, is examined by the defending officer:-

The witness identifies himself.

Q220. What is your work at this school?
A220. I am a Sgt Fitter at this school, sir.
Q221. Are you receiving trades pay as a fitter?
A221. Yes sir, class B trades pay now, and I am qualified as a class A fitter.
Q222. Do you recognise the number on this work ticket (Ex A)?
A222. I do, sir.
Q223. Do you remember if that lorry was one of the two lorries taken out under Cpl Russell's charge on 16 Jun?
A223. I can't say it went or didn't, sir, because I didn't see it go.
Q224. Did Cpl Russell bring that vehicle in to you afterwards?
A224. Yes.
Q225. Did he state it was the vehicle he had had out at Chooham Ranges?
A225. Yes, sir.
Q226. Was there anything wrong with that vehicle?
A226. Nothing that could not be repaired, but it had been repaired shortly before. It is not steering right and it needs a part which it is impossible to get, it is a bushing which has to be turned out on a lathe, and it makes the steering very stiff. If it is explained to the driver of a truck he will understand it, but to a stranger it would be very stiff and strange. This truck was a strange one to Cpl Russell.

Q227. COURT: Would it be Cpl Russell's duty to undertake any mechanical adjustment if he were out with the truck?
A227. Yes sir, to keep it on the road until it got back to the shop, if it was possible to bring it back by driving it.
Q228. The steering was stiff, was it?
A228. Yes, but not impossible to drive it without further adjustment.
Q229. Do you know his trade rating?
A229. I don't, sir.
Q230. Is he one of your regular men?
A230. Yes, he has been around about a year and I have had him in the shop and I know he understands the work, but I don't think he is drawing trade pay at all.

Q231. In your opinion would he be qualified by practice to undertake a minor adjustment of a vehicle?
A231. Yes sir, he helped me fix about eight or them.
Q232. He had no occasion to know about stiff steering on that vehicle?
A232. No sir, it was just recently this modification came through, and it is now this modified part to the steering.

Upon the conclusion of closing addresses by defending officer and prosecutor, the Judge Advocate made the following summing up:-

J.A.:- It is my duty now, gentlemen, to say a few words, perhaps more particularly in regard to the law involved than the actual facts, because the facts are matters you will have to deal with yourselves, and you are perhaps more qualified to come to a conclusion on them than I am. I want to state, with regard to the first charge, that the main offence is absenting himself without leave - that is more important than the time he was absent, as set out in the particulars. Now it is possible for the court, if they come to the conclusion the accused was absent at some time on 16 Jun 42 from his place of duty, whether it is the hrs mentioned in the particulars in the charge or not, to bring in a special finding that he was absent for a certain period other than the time mentioned in the particulars of the charge. Special findings are somewhat peculiar to Military Law; they are not common in civil law, but it is provided in Military Law, by the Army Act, that if the main charge is proven, special findings can be made as far as the particulars are concerned. With regard to ~~the second charge, drunkenness, I just want to point out that~~ from the military point of view drunkenness on duty is considered from the soldier being fit or unfit for duty. There can be no distinction between various degrees of drunkenness on duty. Now you will keep in mind the evidence that was presented. You will recall what Capt McIntyre said regarding the accused, and determine in view of that, as well as in view of the accused's own evidence, and that of the other witnesses, whether or not he was drunk within this definition of drunkenness from the military point of view. The third charge is alternative to the second, and you cannot of course find him guilty of both the second and third charges; it must be one or the other. And finally, gentlemen, the accused must be proven guilty beyond a reasonable doubt which, to put it bluntly, is the doubt any reasonable man might have - not a foolish or silly doubt, but the doubt of a reasonable man. If you have any such doubt, of course it must be resolved in favour of the accused. I will now leave the matter in your hands to deal with in accordance with the oath you have taken this morning.

The Court is closed for the consideration of the finding.

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

THE COURT: The accused is found Not Guilty of the third charge.

The Prosecutor, LIEUT. W.A. MURRAY, C.T.S., being duly sworn, is examined by the J.A.:-

Q233. Have you any evidence to produce as to the character and particulars of service of the accused?
A233. Yes Sir, I produce AF B29o and copy or MFM-o.

The above statement is read, signed by the President, and annexed to the proceedings.

Q234. Is the accused the person named in the statement which you have heard read?
A234. Yes.
Q235. Have you compared the contents of the above statement with the regtl books?
A235. Yes, sir.
Q236. Are they true extracts from the regtl books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?
A236. Yes, sir.

No cross-examination.

LIEUT. R.G.S. BRADSHAW, Officer i/c Vehicle Sec, No. 2 Technical Wing, (RCASC) attached to C.T.S., being duly sworn, is examined by the defending officer:-

The witness identifies himself.

Q237. Is Cpl Russell in your sec?
A237. Yes, he is attached to that sec.
Q238. How long has he been under you?
A238. Approx six mos.
Q239. Would you please tell the court how you found Cpl Russell, the way he has carried out his duties, and his general character?
A239. During the past six mos I have known Cpl Russell I have found him a very efficient, honest and hard working NCO. I can say that with all sincerity. Cpl Russell has been i/c of a group of drivers and I have found him very capable and very sincere in all his work in the past. I cannot think of anything at all which would lead me to make any different statement.
Q240. Have you ever had to check him for anything he has done wrong?
A240. Absolutely not.

J.A.: Do you wish to address the court?

DEFENCE: I would like to draw the court's attention to the crime sheet of the accused; there is very little on it. His work, as you have heard, has been absolutely satisfactory. I would also like to point out that the only reason he has not been paid for his rank long before this is because it was not in the establishment; that is the reason for that. We have wanted to pay him for some time now and have not been able to, simply because the establishment would not allow it, but not because of his conduct or anything like that. He has been doing a NCO's job, with six or eight drivers under him, and has done it on a Pte's pay.

PROSECUTOR: I would like to call the court's attention to sec 471, K.R.(Can) which would prevent the C.O. trying this case, or rather giving detention to a man of the accused's rank. All he could do would be to reduce him or reprimand him. The C.O's. powers are limited.

J.A.: Have you anything to say to the court as to further punishment than reduction?

PROSECUTOR: The prosecution is definitely not asking for any more than the C.O. could have given him, but at the same time it is felt, as the man is not being paid, the reduction to his permanent rank would hardly be sufficient punishment in this case.

The Court is closed for the consideration of the sentence.

CERTIFIED a true and correct
transcript of my shorthand notes:-

Rykman SGT.

Shorthand Writer.

EXHIBIT "A"

One Transport Work Ticket, A.F. G.3518, No. 2-67,
dated 16 June 42., issued to R.93266 Pte. Hill, E.J.,
R.C.A.S.C., attached to C.T.S.

Army Form G 3518

TRANSPORT WORK TICKET

No. 2-87

Make [illegible] Ford. Class 30 cwt. W.D. No. CL 4217965 Date 16-6-42

Unit C.T.S. Section 2 wing Driver's Name Pte Hill S.J. Hour of Parade 0800 hrs

For whom journey is performed (1)	FULL Details of load and service (2)	ROUTE From (3)	ROUTE To (4)	ROUTE Via (5)	Signature of person authorising journey (6)	TIME TAKES From (7)	TIME TAKES To (8)	Miles run (9)
C.T.S.	3 wing Duties	Borden	Borden		[redacted] 16 JUN 1942			
					B			
					C			
					D			
					E			
					F			

Extract "A" Officers Report

Driven return journey by Sgt. Hargrave.

Lt. Wayne Capt.

SPEEDOMETER READINGS Miles		FUEL Gallo.		(16) Total hours out on duty	(17) Signature of Driver	TOTAL
(10) In		(12) Held at Start			S J Hill	
(11) Out	45796	(13) *Add*—Amount drawn			(18) Countersigned	
Mileage		(14) *Deduct*—Remains on completion			Rank	
		(15) Quantity Consumed				

SUMMARY OF EVIDENCE IN THE CASE OF NO. B. 84897 Pte. (A/U/Cpl.) RUSSELL, L.W. (R.C.A.S.C.) posted to CANADIAN TRAINING SCHOOL, a Soldier of the Canadian Army Overseas.

By direction of the Commandant, the Summary of evidence is taken on oath.

1st. WITNESS for the Prosecution.

No. H. 16162 Sergeant HOSEGOOD, J.B. (R.C.A.S.C.) posted to CANADIAN TRAINING SCHOOL, a Soldier of the Canadian Army Overseas, having been duly sworn, states as follows:-

"On 18 Jun 42, in the morning, I accompanied a party from No. 3 Weapons Wing, Canadian Training School, to CHOBHAM RANGES, arriving there at approximately 0900 hours. On reaching there we removed the stores from the two vehicles and commenced to fire our practises. At 1200 hours we broke off for dinner. About one hour afterwards we re-commenced our practices. I went to the truck park about ten minutes later to get my haversack from the truck, but the vehicle was gone. I reported the absence of the vehicle to Captain McINTYRE."

Q. 1. By exam. Off. "How many vehicles were there with the party?"

A. 1. "Two trucks, a Ford V-8 and a Chevrolet 60 cwt"

Q. 2. By Exam. Off. "In which vehicle was your pack?"

A. 2. "In the Chevrolet"

Q. 3. By Exam. Off. "Was it the Chevrolet that was missing?"

A. 3. "Yes."

Q. 4. By Exam. Off. "What is your position at Canadian Training School?"

A. 4. "I am an assistant Instructor in 3" Mortars in No. 3 Weapons Wing."

The Witness continues his evidence:

Q. 5.a. By Exam. Off. Are you certain that it was the Chevrolet truck that was missing when you first went to the truck park, and that it was in that vehicle that you left your pack.?

A. 5.a. The vehicle I went to first was one that was close in to the building. The vehicle at the time was facing BLACKDOWN. The first time I was there and seen the two trucks there together, both the V-8 was the one closest to the building, facing BLACKDOWN. The Chevrolet was off to the right, and it was also facing BLACKDOWN. That was when the Corporal was fixing the wiring.

J.B. Hosegood

H./Sjt. HOSEGOOD, J.B.

Q. 5 By Exam Off. "Which was the longer mileage recorded, from Canadian Training School to CHOBHAM RANGES or from CHOBHAM RANGES to Canadian Training School?"

A. 5 "From Canadian Training School to CHOBHAM RANGES"

J.B. Hosegood

H. 16162 Sgt. HOSEGOOD, J.B.

The accused declines to cross-examine this witness.

SUMMARY OF EVIDENCE IN THE CASE OF NO. B. 84897 Pte. (A/U/Cpl.) RUSSELL, L.W. (R.C.A.S.C.) posted to CANADIAN TRAINING SCHOOL, a Soldier of the Canadian Army Overseas.

By direction of the Commandant, the Summary of evidence is taken on oath.

1st. WITNESS for the Prosecution.

No. H. 16162 Sergeant HOSEGOOD, J.B. (P.P.C.L.I.) posted to CANADIAN TRAINING SCHOOL, a Soldier of the Canadian Army Overseas, having been duly sworn, states as follows:-

"On 16 Jun 42, in the morning, I accompanied a party from No. 3 Weapons Wing, Canadian Training School, to CHOBHAM RANGES, arriving there at approximately 0900 hours. On reaching there we removed the stores from the two vehicles and commenced to fire our practices. At 1200 hours we broke off for dinner. About one hour afterwards we re-commenced our practices. I went to the truck park about ten minutes later to get my haversack from the truck, but the vehicle was gone. I reported the absence of the vehicle to Captain McINTYRE."

Q. 1. By exam. Off. "How many vehicles were there with the party?"

A. 1. "Two trucks, a Ford V-8 and a Chevrolet 60 cwt"

Q. 2. By Exam. Off. "In which vehicle was your pack?"

A. 2. "In the Chevrolet"

Q. 3. By Exam. Off. "Was it the Chevrolet that was missing?"

A. 3. "Yes."

Q. 4. By Exam. Off. "What is your position at Canadian Training School?"

A. 4. "I am an assistant Instructor in 3" Mortars in No. 3 Weapons Wing."

The Witness continues his evidence:

"Later on in the afternoon I saw a truck leaving the truck park, and it was not very long afterwards that I again saw a truck leave. After the practices were finished, we were packing up and getting ready to go home, when I was called over to where the trucks were, and told that I was to drive the Ford V-8 home. At that time Cpl. RUSSELL was standing on the front bumper of the Chevrolet doing something to the wires inside the engine. He seemed to be quite unsteady while he was up there. I then took the mileage of the truck I was to drive, and followed the same route home. There was five miles extra on the speedometer. Taking the mileage from Canadian Training School to CHOBHAM RANGES and reading the mileage back on the same route, I found a difference of five miles."

Q. 5 By Exam Off. "Which was the longer mileage recorded, from Canadian Training School to CHOBHAM RANGES or from CHOBHAM RANGES to Canadian Training School?"

A. 5 "From Canadian Training School to CHOBHAM RANGES"

J.B. Hosegood

H. 16162 Sgt. HOSEGOOD, J.B.

The accused declines to cross-examine this witness.

2nd. WITNESS for the Prosecution.

No. P. 22228 C.S.M. (W.O. II) SCHMITZ, J.R. (P.P.C.L.I.) posted to Canadian Training School, a Soldier of the Canadian Army Overseas, having been duly sworn, states as follows;-

"On 10 Jun 42, at 1320 hours, I was informed by Sgt. HOSKWOOD that one of the trucks and the two drivers, Cpl. RUSSELL and Pte. HILL were missing. I was told by Captain McINTYRE to place the two drivers under open arrest when the truck came back. The truck came back, but before I could get over to it, it was gone again. When it came back the third time, I was notified by Captain McINTYRE that it was pulling in, so I immediately went over and placed Cpl. RUSSELL and Pte. HILL under open arrest. I then went back to the firing point, carried on and finished our firing for the day, and Captain McINTYRE and I walked back to the trucks. The two drivers had the top of the hood off and were fixing the wires. Captain McINTYRE asked Cpl. RUSSELL what was wrong. Cpl. RUSSELL informed us that the truck was out of commission and would have to be towed home. We asked again what was wrong and were just told that something was wrong and that they would have to be towed. Captain McINTYRE and I moved around to the side of the truck and looked in at the panel board, and found that there was no key in the switch. Captain McINTYRE then asked the drivers if the truck would not work better with the key in the switch. They said nothing. Captain McINTYRE asked me for the key, which he had given to me previously, after having taken it out of the truck earlier in the afternoon. Captain McINTYRE then told the drivers to connect the wires up the way they had them. Captain McINTYRE got into the truck and started it. He then informed the drivers that they would not drive their trucks home. He then asked Cpl. RUSSELL for his work ticket, and after some hesitation, Cpl. RUSSELL gave it to Captain McINTYRE. Captain McINTYRE sent Cpl. RUSSELL around to the back of the truck, and Captain McINTYRE drove the truck around to the firing point, and then drove it back to Canadian Training School. Cpl. RUSSELL was in no condition to drive the truck owing to previous indulgence in alcohol."

Q. 6. By Exam. Off. "How near were you to Cpl. RUSSELL?"

A. 6. "I was beside Cpl. RUSSELL by the truck."

Q. 7. By Exam. Off. "Did you smell Cpl. RUSSELL'S breath?"

A. 7. "No."

C.S.M. Schmitz J.R.
P. 22228 C.S.M. SCHMITZ, J.R.

Q. 8 By accused. "What do you mean by 'hesitation' in your statement?"

A. 8 "I mean that there was a matter of three or four minutes before the work ticket was handed over"

The accused declines to further cross examine this witness.

2nd. WITNESS
For the
Prosecution.

Q. 8a. "Was Cpl. RUSSELL drunk?"
By Exam. Off.
A. 8a. "Thats a pretty hard question to answer."

Q. 8b. "Would you have felt safe with Cpl. RUSSELL driving
By Exam. Off. you in the condition in which he was?"
A. 8b. "Not knowing him previously, I would say no."

Q. 8c. "You have stated previously that Cpl. RUSSELL was in no
By Exam. Off. condition to drive the truck, owing to previous indulgence in alcohol. Do you mean by that, that he was incapable of performing his duty owing to previous indulgence in alcohol?"

A. 8c. "In my opinion, yes."

E.S.M. Schmitz J.S.
P. 22228 C.S.M. SCHMITZ, C.F.R.

The accused declines to further cross examine this witness.

3rd. WITNESS
For the
Prosecution.

Captain D.McINTYRE (R.C.R.)posted to Canadian Training School, an Officer of the Canadian Army Overseas, having been duly sworn, states as follows:-

"I was the Officer in charge of a party at CHOBHAM RANGES on 16 Jun 42. The party left Hamannah Barracks at approximately 0830 hours and proceeded to CHOBHAM RANGES. After unloading the vehicles, they were parked behind a tin shed out of view from the position where we were on the ranges. At approximately 1330 hours Sgt. ROSEWOOD reported to me that the two truck drivers, one of whom was Cpl. RUSSELL, had disappeared. I investigated and found that they were missing. Later I noticed one of our trucks being driven off, and went around to investigate to find only one truck parked in the parking lot. I then gave instructions to C.S.M. SCHMITZ to place the two drivers under arrest on their return. I did not see them return, but did see the same truck pull out again, and being driven by Cpl. RUSSELL. When they returned the third time, C.S.M. SCHMITZ placed them under open arrest. I went over to the vehicles to find Cpl. RUSSELL standing on the bumper and altering the electric switch wires on his own vehicle, as he did not have the key. He stated that he had lost it from his pocket, when actually, he had left it in the truck, and I had removed it and had given it to C.S.M. SCHMITZ. I then noticed that Cpl. RUSSELL was under the influence of liquor, and ordered him into the back of the truck, and made other arrangements for the truck to be driven home."

Q. 9
By Exam. Off.
"When you first investigated the absence of the two drivers, how many trucks were there in the parking lot?"

A. 9
"I did not go over to the truck park at that time"

Q. 10
By Exam. Off.
"When you investigated the second time, and found one truck in the lot and one missing, can you state which truck was missing, and which truck was in the lot?"

A. 10.
"Truck CL-42179G5, a Ford V-8 was missing, and Cpl. RUSSELL'S own truck CL-4209821 was there."

Q. 11.
By Exam. Off.
"Was it at that time that you found and removed the keys?"

A. 11.
"Yes."

Q. 12.
By Exam. Off.
"I take it then, that when you said you saw the same truck leaving the second time, that the above answer was why you knew it was the same truck, namely the Ford V-8?"

A. 12
"Yes."

Q. 13a
By Exam. Off.
"In your opinion, was Cpl. RUSSELL drunk?"

A. 13a
"In my opinion he was unfit to drive the vehicle owing to previous indulgence in alcoholic liquor."

D. McIntyre
(Signature) Captain, R.C.R.

The accused declines to further cross examine this witness.

Q. 13
By accused.
"Did you actually see me driving the truck?"

A. 13
"Yes"

The accused declines to further cross examine this witness.

3rd. WITNESS For the Prosecution.

Captain D.McINTYRE (R.C.A.)posted to Canadian Training School, an Officer of the Canadian Army Overseas, having been duly sworn, states as follows;-

"I was the Officer in charge of a party at CHOBHAM RANGES on 16 Jun 42. The party left Hawannah Barracks at approximately 0830 hours and proceeded to CHOBHAM RANGES. After unloading the vehicles, they were parked behind a tin shed out of view from the position where we were on the ranges. At approximately 1330 hours Sgt. ROSEWOOD reported to me that the two truck drivers, one of whom was Cpl. RUSSELL, had disappeared. I investigated and found that they were missing. Later I noticed one of our trucks being driven off, and went around to investigate to find only one truck parked in the parking lot. I then gave instructions to C.S.M. SCHMITZ to place the two drivers under arrest on their return. I did not see them return, but did see the same truck pull out again, and being driven by Cpl. RUSSELL. When they returned the third time, C.S.M. SCHMITZ placed them under open arrest. I went over to the vehicles to find Cpl. RUSSELL standing on the bumper and altering the electric switch wires on his own vehicle, as he did not have the key. He stated that he had lost it from his pocket, when actually, he had left it in the truck, and I had removed it and had given it to C.S.M. SCHMITZ. I then noticed that Cpl. RUSSELL was under the influence of liquor, and ordered him into the back of the truck, and made other arrangements for the truck to be driven home."

Q. 9 By Exam. Off. "When you first investigated the absence of the two drivers, how many trucks were there in the parking lot?"

A. 9 "I did not go over to the truck park at that time"

Q. 10 By Exam. Off. "When you investigated the second time, and found one truck in the lot and one missing, can you state which truck was missing, and which truck was in the lot?"

A. 10. "Truck CL-4217965, a Ford V-8 was missing, and Cpl. RUSSELL'S own truck CL-4203821 was there."

Q. 11. By Exam. Off. "Was it at that time that you found and removed the key?"

A. 11. "Yes."

Q. 12. By Exam. Off. "I take it then, that when you said you saw the same truck leaving the second time, that the above answer was why you knew it was the same truck, namely the Ford V-8?"

A. 12 "Yes."

The Witness continues his evidence.

"On checking the work ticket of vehicle CL-4217965, which I now recognize, it appears that the vehicle had been driven approximately five miles without authority. The mileage out in the morning was 4596, and the mileage on leaving CHOBHAM RANGES was 4601, showing twenty five miles, whereas the return trip home, over exactly the same road, under similar conditions, only showed a mileage of exactly twenty miles, being 4641."

D. McIntyre
(D.McIntyre) Captain, R.C.A.

Q. 13 By accused. "Did you actually see me driving the truck?"

A. 13 "Yes"

The accused declines to further cross examine this witness.

The accused was cautioned as follows;-

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

The accused declines to give evidence.

The accused called No. B 89266, Pte. HILL, S.J. (R.C.A.S.C.) as 1st. witness for the defence.

1st. WITNESS For the Defence.

"No. B. 89266 Pte. HILL, S.J. (R.C.A.S.C.) attached to Canadian Training School, a Soldier of the Canadian Army Overseas, having been duly sworn, states as follows;-

Q. 14. By accused.
"At what time did we arrive at CHOBHAM RANGE?"

A. 14.
"At approximately 1600 hours."

Q. 15. By accused.
"What reason did I have for taking the truck out?"

A. 15
"The steering was very stiff in the Ford V-8, and we took it out to see if we could loosen up the stiffness."

Q. 16 By accused.
"Did I do any work on the steering gear when we were out?"

A. 16
"I remember we were working around the truck."

Q. 17 By Exam. Off.
"Was the Chevrolet truck taken out?"

A. 17
"Not that I remember."

Q. 18 By Exam. Off.
"Was the Ford truck taken out before or after the mid-day dinner?"

A. 18
"I am not sure."

Q. 19 By Exam. Off.
"How many times do you remember the truck going in and out?"

A. 19
"I just remember the truck going out and coming in once."

Q. 20 By Exam. Off.
"Did you drive the truck yourself when it was out?"

A. 20
"No."

Q. 21 By Exam. Off.
"Where did you go with the truck?"

A. 21
"We just went down the road a ways, I am not sure as to the distance."

Q. 22 By Exam. Off.
"You stated that you stopped and did some work on the truck. Did you stop for any other purpose?"

A. 22
"No.

Q. 23 By Exam. Off.
"Did you have a drink while you were out with the truck?"

A. 23
"No."

Q. 24 By Exam. Off.
"Can you remember Cpl. RUSSELL having a drink while you were out with the truck?"

A. 24
"I cannot remember."

1st. WITNESS
For the
Defence (Cont'd)

Q. 25 By Exam. Off. "Did you at any time during the day of 16 Jun 42 have a drink of alcoholic liquor?"

A. 25 "Yes."

Q. 26 By Exam. Off. "Do you know if Cpl. RUSSELL had a drink of alcoholic liquor at that time?"

A. 26 "Yes."

Q. 27 By Exam. Off. ""Did you bring the liquor with you, or did you get it during the day?"

A. 27 "We got it during the day."

Q. 28 By Exam. Off. "When and where did you get it?"

A. 28 "I do not remember the name of the Pub."

Q. 29 By Exam. Off. "Had you driven to the Pub, or did you walk?"

A. 29 "We walked."

Q. 30 By Exam. Off. "Was it afterwards that the truck was taken out?"

A. 30 "Afterwards."

Q. 31 By Exam. Off. "What drink did you have?"

A. 31 "I was drinking beer and whisky."

Q. 32 By Exam. Off. "Can you remember what Cpl. RUSSELL was drinking?"

A. 32 "I think he was drinking beer."

B. 89266 Pte. Hill, S.J.

I certify that the foregoing Summary of Evidence consisting of five pages was taken down by ~~me~~ a stenographer in my presence and ~~in~~ the presence of the accused and that Rules of Procedure 4 (c), (d), (e) and (f) have been complied with.

W.A. Murray

(W.A.Murray) Lieut. (V.R.C)

Bordon,
Hants.,
17 Jun 42.

Major
President

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

B.84897, Pte. (A/U/Cpl.) Russell, L.W. of the Royal Canadian Army Service Corps, Posted to Canadian Trng. School

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with the statement but are not to be referred to in the proceedings.

See Para. 664, K.R., 1935.

	*Within last 12 months.	*Since Enlistment.
For Failing to comply with Garrison Orders	1 times	1 times.
For ----------N I L----------	times	---------- times.
For ----------N I L----------	times	---------- times.
For ----------N I L----------	times	---------- times.

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

Number of instances of gallantry or distinguished conduct. NIL

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

XX

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

2. The accused has not been previously convicted.

XX.

Previous convictions by a court martial and summary awards under Section 47 of the Army Act, and dispensations with trial under Section 56 of the Army Act, are set forth in the schedule annexed hereto.

W1. 42840/864 50,000 2/40 W. S. Ltd. 11—6414

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

~~[illegible]~~

~~[illegible]~~

4. The accused has been in confinement, awaiting trial on the present charges

for No days in Civil Custody,

and 15 days in Military Custody.

Total 15 days.

Of which No days were spent in hospital.

5. The present age of the accused according to his ~~[illegible]~~ attestation paper is 27 years

6. The date of his ~~[illegible]~~ attestation specified in his ~~[illegible]~~ attestation paper is 24 Feb., 1941

~~[illegible]~~

8. The accused is entitled to deferred pay or gratuity in respect of 1 year, 4 months years' service.

9. The accused is entitled to reckon 1 yrs. 4 mos. ~~[illegible]~~ service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [~~[illegible]~~

~~[illegible]~~

~~[illegible]~~

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

		Date of Promotion.
In the rank of A/Cpl (unpaid)	7/12 years.	16th November 1941
In the rank of	years.	
In the rank of	years.	

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

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

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

of the

Army Number, Rank and Name

NIL

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

Description of Court by which convicted, or status of Officer dispensing with the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

(Continued overleaf)

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

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

Signed this 2nd day of July, 42.

G. C. Peckham

CAPT. & ADJUTANT
CANADIAN
TRAINING SCHOOL

CERTIFIED TRUE COPY. E.C. Peckham

No. B-[illegible]97 Name RUSSELL, Louis Wellington Corps CA (A) R.C.A.S.C. (SERVICES WING)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Date of enlistment 24-2-41 | G.C. Badges | Service or Proficiency Pay | Sheet No. 1 | Signature O.C. Company, etc. | Character

M.F.M. 5 A.F.B. 117 (75M—7-41 (2215-20) H.Q. 1772-30-1652

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Units of award or of service dispensing with trial	By whom awarded	Remarks
				No entries 5/3/41					
				TOS RCASC/TC AS ATTACHED		eff. 6-3-41	DO pt 11	# 57 6-3-41	
				SOSon ceasing to be attached on Attachment to General Holding Unit. Eff 17/6/41 Pt 11. 147 & 17/6/41					
Bordon	24-3-42	Opl		AA Secll Failing to comply with Garrison Orders in that he did not wear his respirator during Respirator drill	Documentary	Reprimanded	27 mar 42	Lt Col C.W. Devey Commanding Officer	

(P.T.O.)

APPLICATION FOR DEFENDING OFFICER, ETC.

PRECEDENT.

To :- O.C., Canadian Training School

With reference to my pending trial by Field-General Court-Martial.

I wish that an officer be assigned to act as defending officer. (If Lieut. W.A. Dalrymple, Essex Scottish Regiment is available, I wish that he may be assigned for this purpose.)

L W Russell

B.34897 Pte. (A/L/Cpl) Russell, L.W.
R.C.A.S.C. - C.T.S.

Brig. Commanding,

H.Q., "F" Group

The above officer is recommended as defending officer in this case.

(C.W. Davey) Colonel, D.A. S.S.,
Commandant, Canadian Training School.

5"K - 15°0.

Mr. Russell, L. W.

RECORDED AT CMHQ IN AB 160 5-K-150.

FIELD GENERAL COURT-MARTIAL

4/388

Convened by Order of Brig J.C. Jefferson Comd 10 CIB dated 15 Apr 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 162, 163, fns, KR Can 308, 328, 330.)

Number	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B.45809	Pte. L/Cpl.	Lawrence William	RUSSELL	A & S H of C

CERTIFIED TRUE COPY

PROCEEDINGS REVIEWED

J.R. Mignault Capt

6 June 45

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

Proceedings reviewed

Lt Col Asst JAG

Can Sec HQ 2 Corps

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Germany on (date(s)) 18 Apr 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROL. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of each variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A65, for notes and instrs on how to record addresses, evidence, etc., which recurs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 118, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto. The Court is satisfied that it is properly convened and constituted(2), accused is (not) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 48, 50, RP 105-107. 3. RP 11-13, 23, 107.)

A3. The Court is opened. The accused is (not) brought before the Court. At 1940 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (not) fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused should be dealt with by civil power instead of being dealt with by military authorities.~~

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

A5. President to accused: Do you object to 102707 Sgt L Van Buscren as interpreter? Ans NO

The Interpreter is sworn.(1) Do you object to W.11436 S/Sgt FW Elliot as shorthand writer? Ans NO

The shorthand writer is sworn.(1)

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

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(3). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

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

President	MAJ	G.L. CASSIDY	ALQ R
Member	CAPT	J. KIDD	L & W Regt
Member	LT.	W.W. SOLKIN	ALQ R
Judge-Advocate	CAPT	D.G. DEAN	2 Cdn Corps
Prosecutor	CAPT	E.E. WASSON	4 Cdn Armd Div
Defending Offr	CAPT	D.B. LEWIS	HQ 10 C.IB

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

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

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

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 100), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 14, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

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

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A56 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO (1)

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

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

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

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

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

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

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

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

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

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

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. [illegible] the witnesses, recorded in para D5 the appropriate procedure for the defence is followed.(1)

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

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

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

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

Or. The President announces that the accused is found guilty on the charge and sentence and so to be promulgated forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

Ans. Do you wish to call a witness as to your character Yes.

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

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

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

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

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

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

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

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

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 42. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

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

Accused: B.45809 Pte. (L)Cpl) Lawrence William RUSSELL A & S H OF C

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA SEC 41	Not guilty	Guilty	
2nd Alternative AA Sec 40	Not guilty	Not guilty	
3rd AA sec 40	Not guilty	Not guilty	
4th AA sec 41	Not guilty	guilty	
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; Findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 717, and in lieu of NIL see RP 44 fn 6.)

~~ATTACHED TO [illegible]~~ ~~[illegible]~~ (1)

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

Time in confinement awaiting present trial—a total of 8 days, of which NIL days were spent in hospital.(2)

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

Sentence Awarded by the Court:

TO SUFFER PENAL SERVITUDE FOR THE PERIOD OF FIVE YEARS
AND TO BE DISCHARGED WITH IGNOMINY FROM HIS MAJESTY's SERVICE

(Sgd) A. Advocate Capt 18 Apr 45 (Sgd) J.L. Cassidy Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50)

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

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

I reserve confirmation of the finding and sentence for higher authority

Date 26 Apr 45 (Sgd) J.H. Jefferson Brig. Commanding 10 Cdn Inf Bde

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

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

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

CONFIRMED

~~[illegible]~~ (1) AA 57A. Delete if not used.

(Sgd) H.D.G. Crerar
(H.D.G. CRERAR) GENERAL
Date 10 May 45 Commanding GOC in C FIRST CDN ARMY
Confirming Officer.

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

Accused.	Date.	Signature of Offr.
B.45809 L/Cpl. Lawrence William Russell	23 May 45	A S H of C

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

MEDICAL OFFICER'S CERTIFICATE (KR(Can) Para 567

I certify that I have this day examined L/Cpl Lawrence Willi

and in my opinion he is fit/~~unfit~~ to

trial by Court Martial.

Location FIELD

Date 18 Apr 45

Medical Officer

HQ Sqn 4 Cdn Armd Div
Unit

FIELD GENERAL COURT-MARTIAL

CFA35 (In lieu of AFA3)
40/PAM/1097 (2668)

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.45809	Pte.	L/Cpl.	Lawrence William	RUSSELL	A & S H of C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 15 Apr 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial",

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

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

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

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

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJOR	G.L. CASSIDY	Alq R

MEMBERS.

CAPTAIN	J.L.SUMMERS	29 Cdn Armd Recce Regt
CAPTAIN (Rank.)	J KIDD (Named or detailed. RP 106.)	Linc & Welland R (Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
LIEUT.	W.W. SOLKIN	Alq R

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
CAPT	D.G. DEAN	2 Cdn Corps

On Active Service in the Fd

in (Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)
GERMANY	J C Jefferson	Brig

Date 15 Apr 45 Commanding 1o Cdn Inf Bde Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

CHARGE SHEET

The accused No. B.45809 (L/Cpl) Pte. Lawrence William RUSSELL, Headquarters Company, 1st Bn The Argyll & Sutherland Highlanders of Canada a soldier of the Canadian Army Overseas, is charged with:

First Charge
Sec 41
Army Act

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

in that he

in the field in Germany, on 10 Apr 45, had carnal knowledge of Frau Elfreide Dahmen, without her consent.

Second Charge
Sec 40
Army Act
(alternative)

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he,

in the field in Germany, on 10 Apr 45, did fraternize with Frau Elfreide Dahmen, a German civilian and resident of Germany, by having carnal knowledge of the said Frau Elfreide Dahmen with her consent

Third Charge
Sec 40
Army Act

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he,

in the field in Germany on the 10 Apr 45 did fraternize with German civiliens at the house Paul Strasse 6 by drinking and conversing.

Fourth Charge
Sec 41
Army Act

WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, ROBBERY WITH AGGRAVATION CONTRARY TO Sec 23(1) (a) of THE LARCENY ACT 1916.

in that he,

in the field in Germany on 10 Apr 45 being armed with a pistol robbed Frau Elfreide Dahmen of one gold wrist watch.

In the field
14 April 45

R D Mackenzie Maj

(R.D. Mackenzie) Major
A/Commanding Officer
A & S H of C

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the field
15 Apr 45

J C Jeffreson

(J.C. JEFFRESON) Brig
Comd 10 Can Inf Bde

9. If you decide to confirm the findings and sentence, you should write "confirmed" in Part III of page 4 of GP A96, and sign the minute as GOC-in-C, First Cdn Army. This case being one of the first in Germany in which an accused is charged with rape, you may in your discretion order that the findings and sentence be promulgated on parade, so that it may act as a deterrent to other personnel in the Division.

10. After the proceedings have been dealt with by you, they should be passed to the AJAG, First Cdn Army for transmission in order that the same may be promulgated.

"T.G.Norris"
(T.G.Norris) Col
DJAG
Cdn Sec 1 Ech - HQ 21 Army Gp

3. The evidence in this case may be summarized as follows: Between 1400 and 1500 hrs 10 Apr 45, Paul Stachlschmidt, the father of Frau Dahmen, went to his house at 6 Paul Strasse, Meppen, Germany, where he found four Canadian soldiers, including the accused and Pte Kozak, seated in a downstairs room. Two bottles were on a table. Also present were Stachlschmidt's wife, his eldest daughter, his granddaughter and another woman. Kozak ordered Stachlschmidt to produce schnapps and glasses, which he and his daughter procured. Two of the soldiers then disappeared and no mention is made of them thereafter. Kozak made Stachlschmidt and his wife drink from both bottles which were produced. Kozak proceeded to search the house and in the writing-room found a shot-gun. Kozak ordered Stachlschmidt to get the ammunition, loaded the gun and fired a shot into the ceiling. The accused was seated in a chair throughout. Later on Stachlschmidt's youngest daughter, Frau Dahmen entered the house. Kozak took her by the arm and ordered her to sit down, which she did when her father told her to do so. She stated that both soldiers were armed with pistols and adopted a "fighting attitude" which frightened her. The accused pointed to her wrist-watch, and she gave it to him. On cross-examination, Frau Dahmen admitted that the accused did not have a pistol in his hand when she gave him the watch. In the meantime, Kozak kept walking up and down the room and if any of the Germans moved or talked adopted a menacing attitude with the pistol. Kozak then took Frau Dahmen out of the room, returning with her in a short time. She intimated to her father that nothing had happened to her then. Kozak then talked to the granddaughter and offered her a chocolate bar. The accused continued to sit in the corner - at times holding his pistol, at other times leaving it on a table - talking to the eldest daughter who understood a little English. Kozak then ordered Stachlschmidt to get his radio from the writing-room. He threw the radio on a sofa and pushed Stachlschmidt on it. At this time Herman Bornhein, a neighbour, entered the house. Kozak made Stachlschmidt remove his coat and vest and made both him and Bornheim lie down on the floor. Bornheim claimed he was robbed. Kozak then went upstairs with Frau Dahmen, leaving the accused to guard those downstairs. On being questioned by the court, Frau Dahmen stated that they went into a bedroom, Kozak caught her by her jumper, ordered her to undress and lie on the bed. She undressed and Kozak had sexual intercourse with her. Frau Dahmen did not cry out or struggle. She stated that she was afraid she would be shot if she fought him. While they were thus engaged, the accused appeared in the bedroom. Some conversation took place between the two, most of which Frau Dahmen did not understand but she did hear Kozak say "another two minutes". The accused then left the room. Shortly before this incident, Bornheim managed to effect his escape. The accused returned to the bedroom pushed Kozak aside and had sexual intercourse with Frau Dahmen. She claimed there was penetration. The accused's pistol was on a chair. Frau Dahmen stated that she did not fight or cry out because she was afraid the accused would shoot her. When the accused went upstairs, Stachlschmidt jumped out of a window and went to get his son-in-law. While the accused was upstairs, Lt LB Walker, 221 Det Mil Gov, accompanied by Lt GTJ Boxseau, Netherlands Army, arrived at 6 Paul Strasse. Lt Walker went upstairs and entered the bedroom, where he found the accused on the bed with Frau Dahmen underneath him. The accused was clad only in vest and underpants; the woman in vest and stockings. The accused's penis was exposed and partly erect. He ordered the accused to dress. His clothes were on the floor and underneath them were a loaded P.38 revolver, a loaded Colt revolver and a loaded .22 rifle. The revolvers were in holsters attached to web belts. Frau Dahmen and the accused proceeded to dress. When the accused was putting on his pants, Frau Dahmen's husband arrived. He and his wife conversed in German and then speaking in English he told Lt Walker his wife claimed to have been raped by the accused and the other soldier. The accused said nothing. Frau Dahmen was crying.

There is some conflict in the evidence here. Herr Dahmen stated it was not until later that evening that his wife complained she was raped, while Frau Dahmen said she told her husband when he arrived in the bedroom. Lt Walker's evidence bears out her evidence in this respect. Lt Walker then cautioned the accused and on being asked by him if he wished to say anything, the accused remained silent. Herr Dahmen then stated that his wife alleged the accused had stolen her watch. The accused denied doing so. He was made to empty his pockets, and a watch was found in his left breast pocket. It was identified by Frau Dahmen. When Lt Walker was talking to Herr Dahmen, the accused ran downstairs and out into the street. Lt Walker gave chase and caught the accused about 400 yards from the house. All the Prosecution witnesses stated that the accused and Kozak had been drinking but neither of them were drunk. The accused gave no evidence in his own defence.

4. With respect to the first charge, it is submitted that the Prosecution established the accused had carnal knowledge of Frau Dahmen and that penetration was proved. As to consent, she admits she made no physical resistance to the accused, but alleged she submitted through fear. It is considered that the action of the accused and Kozak downstairs, the continued display of weapons and the fact that the accused was armed when he entered the bedroom substantiate her evidence in that respect. There is some conflict of evidence regarding the early complaint made by Frau Dahmen, but taking her evidence and that of Lt Walker, it seems that an actual complaint was made. It is further submitted that there is ample corroboration of the complainant's story - the finding of the pistols in the bedroom, the demeanour of the accused on the arrival of Lt Walker, the fact that he did not deny the accusation before he was cautioned by Lt Walker and his attempt to escape afterwards, are all corroborative matters.

5. As to the fourth charge, it is my opinion that there is sufficient evidence to support the finding. Frau Dahmen handed over the wrist-watch, which was subsequently found on the accused's person, because she was in fear, caused by the presence of the accused and Kozak who were armed with pistols. Even though the accused may not have been holding the weapon at the time of receiving the watch, the weapon was in plain sight; it is also reasonable to believe that fear would be caused by the action of the accused and those of Kozak immediately prior to the robbery.

6. I must therefore advise that there are no illegalities or irregularities which would warrant widhholding confirmation of the findings and sentence.

7. The accused called a witness as to character, Capt W H Mills, who stated that he has known the accused since July 1940 and that his general character is very good, that he is very willing and co-operative and he always believed that the accused was an honest man.

8. In mitigation the Defending Officer stated that the accused is 23 years of age, that he joined his unit in July 1940. He is a Lance-Corporal. He was with the unit in Jamaica and in England and that he has always been a very good soldier. He parents are living in Canada and recent trouble in his family may have influenced him to a certain degree. His father is a retired medical practitioner and has recently separated from his mother. Kozak was the real leader, as the accused is the type of person who can be easily led. On the day of the incident the accused had been drinking and he is not used to the wines and spirits of the continent.

9. If you decide to confirm the findings and sentence, you should write "confirmed" in Part III of page 4 of CP A96, and sign the minute as GOC-in-C, First Cdn Army. This case being one of the first in Germany in which an accused is charged with rape, you may in your discretion order that the findings and sentence be promulgated on parade, so that it may act as a deterrent to other personnel in the Division.

10. After the proceedings have been dealt with by you, they should be passed to the AJAG, First Cdn Army for transmission in order that the same may be promulgated.

"T.G.Norris"
(T.G.Norris) Col
DJAG
Cdn Sec 1 Ech - HQ 21 Army Gp

COPY

HQ

529/GOCinC Rev/1 (DJAG)
529/Russell LW/1

6 May 1945

GOC-in-C
First Cdn Army

FGCM - 10 Apr 45
R-45600 Pte (L/Cpl) Russell LW
A & SH of C

1. These proceedings have been reviewed by me and are enclosed herewith for confirmation or otherwise.

2. The accused was charged on four charges as follows:

1ST CHARGE
AA Sec 41

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

in that he

in the field in Germany, on 10 Apr 45, had carnal knowledge of Frau Elfreide Dahmen, without her consent

2ND CHARGE
(Alternative)
AA Sec 40

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field in Germany, on 10 Apr 45, did fraternize with Frau Elfreide Dahmen, a German civilian and resident of Germany, by having carnal knowledge of the said Frau Elfreide Dahmen with her consent.

3RD CHARGE
AA Sec 40

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field in Germant, on 10 Apr 45, did fraternize with German civilians at the house Paul Strasse 6 by drinking and conversing.

4TH CHARGE
AA Sec 41

WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, ROBBERY WITH AGGRAVATION CONTRARY TO SEC 23(1)(a) OF THE LARCENY ACT 1916

in that he

in the field in Germany, on 10 Apr 45, being armed with a pistol robbed Frau Elfreide Dahmen of one gold wrist watch.

He pleaded not guilty to all charges, was found guilty of the first and fourth charges and not guilty of the second and third charges. He was sentenced to five years penal servitude and to be discharged with ignominy from His Majesty's Service. Comd 10 Cdn Inf Bde reserved the findings and sentence for confirmation.

3. The evidence in this case may be summarized as follows: Between 1400 and 1500 hrs 10 Apr 45, Paul Stachlschmidt, the father of Frau Dahmen, went to his house at 6 Paul Strasse, Meppen, Germany, where he found four Canadian soldiers, including the accused and Pte Kozak, seated in a downstairs room. Two bottles were on a table. Also present were Stachlschmidt's wife, his eldest daughter, his granddaughter and another woman. Kozak ordered Stachlschmidt to produce schnapps and glasses, which he and his daughter procured. Two of the soldiers then disappeared and no mention is made of them thereafter. Kozak made Stachlschmidt and his wife drink from both bottles which were produced. Kozak proceeded to search the house and in the writing-room found a shot-gun. Kozak ordered Stachlschmidt to get the ammunition, loaded the gun and fired a shot into the ceiling. The accused was seated in a chair throughout. Later on Stachlischmidt's youngest daughter, Frau Dahmen entered the house. Kozak took her by the arm and ordered her to sit down, which she did when her father told her to do so. She stated that both soldiers were armed with pistols and adopted a "fighting attitude" which frightened her. The accused pointed to her wrist-watch, and she gave it to him. On cross-examination, Frau Dahmen admitted that the accused did not have a pistol in his hand when she gave him the watch. In the meantime, Kozak kept walking up and down the room and if any of the Germans moved or talked adopted a menacing attitude with the pistol. Kozak then took Frau Dahmen out of the room, returning with her in a short time. She intimated to her father that nothing had happened to her then. Kozak then talked to the granddaughter and offered her a chocolate bar. The accused continued to sit in the corner - at times holding his pistol, at other times leaving it on a table - talking to the eldest daughter who understood a little English. Kozak then ordered Stachlschmidt to get his radio from the writing-room. He threw the radio on a sofa and pushed Stachlschmidt on it. At this time Herman Bornhein, a neighbour, entered the house. Kozak made Stachlschmidt remove his coat and vest and made both him and Bornheim lie down on the floor. Bornheim claimed he was robbed. Kozak then went upstairs with Frau Dahmen, leaving the accused to guard those downstairs. On being questioned by the court, Frau Dahmen stated that they went into a bedroom, Kozak caught her by her jumper, ordered her to undress and lie on the bed. She undressed and Kozak had sexual intercourse with her. Frau Dahmen did not cry out or struggle. She stated that she was afraid she would be shot if she fought him. While they were thus engaged, the accused appeared in the bedroom. Some conversation took place between the two, most of which Frau Dahmen did not understand but she did hear Kozak say "another two minutes". The accused then left the room. Shortly before this incident, Bornheim managed to effect his escape. The accused returned to the bedroom pushed Kozak aside and had sexual intercourse with Frau Dahmen. She claimed there was penetration. The accused's pistol was on a chair. Frau Dahmen stated that she did not fight or cry out because she was afraid the accused would shoot her. When the accused went upstairs, Stachlschmidt jumped out of a window and went to get his son-in-law. While the accused was upstairs, Lt L. Walker, 221 Det Mil Gov, accompanied by Lt GTU Boxseau, Netherlands Army, arrived at 6 Paul Strasse. Lt Walker went upstairs and entered the bedroom, where he found the accused on the bed with Frau Dahmen underneath him. The accused was clad only in vest and underpants; the woman in vest and stockings. The accused's penis was exposed and partly erect. He ordered the accused to dress. His clothes were on the floor and underneath them were a loaded p.38 revolver, a loaded Colt revolver and a loaded ..22 rifle. The revolvers were in holsters attached to web belts. Frau Dahmen and the accused proceeded to dress. When the accused was putting on his pantz, Frau Dahmen's husband arrived. He and his wife conversed in German and then speaking in English he told Lt Walker his wife claimed to have been raped by the accused and the other soldier. The accused said nothing. Frau Dahmen was crying.

1C/ Russell LW/1

OFFICE OF THE JUDGE ADVOCATE GENERAL

CANADIAN ARMY OVERSEAS

REVIEW SHEET

EX - CHIEF CENSOR'S ACTION

(21 AGp
(xxx
(xx

POC'D 18 Apr 45
(Date of sentence)

No B-45809 Rank Pte (L/Cpl)

Name Russell L.W.

Unit 1st Bn - The A.S.Highrs of C

Charge(s)	41	40(alt)	40	41
Plea	NG	NG	NG	NG
Finding	G	NG	NG	G

Sentence 5 years P.S. and discharge with ignominy

Received from CR 4 Jun 45
Passed to Rev Offr
Passed to Rev 1 14 June 45
Passed to
Passed to
Returned to Rev Clerk
Record & Pass ACS "LJ Brody" Capt
14 June 1945

SECOND ATTENDANCE OF LEGAL REVIEWING OFFR

Pass Confirm

Date 11 June 45 "J.R. Miquelon" (Reviewing Officer) Capt

FINAL JAG CERTIFICATION

Pass Confirm

Date 19 Jun 1945 "LJ Brody" Capt

OBSERVATIONS:
In the case of pleas of guilty:- There is nothing in the record of the proceedings which required the Court to advise the accused to change his plea.
In the case of pleas of not guilty:- There is legal evidence to justify the finding.
No substantial injustice to the accused.

1. I have carefully read the proceedings.

2. The facts are briefly and well summarized in DJAG review sheet at fols 1 and 2.

3. I quite agree with his opinion on the legality of findings and conviction.

4. Passed.

RECORDED AT CMHQ IN AB 160
SK-150

(Continue over if necessary)

First Witness for the Prosecution

Frau Elfreide Dahmen, Harst Wessel, Meppen Germany, having been duly sworn is examined by the Prosecution

Q.1 If there is no objection I will lead the witness in some parts in view of the hour and of the previous trial?

A.1 Defence - I have no objection I will object if it goes to far.

Q.2 You are Frau Elfreide Dahmen, Harst Wessel, Meppen, Germany

A.2 Yes.

Q.3 What is your husband's name?

A.3 Georg Dahem

Q.4 You are a German civilian and an inhabitant of Germany?

A.4 Yes.

Q.5 On the 10th of April this year at about 3.30 in the afternoon you visited your parents at Paul Strase 6?

A.5 Yes

Q.6 Please tell the court who were there when you arrived and what happened?

A.6 When I entred the home I met a Canadian soldier.

Q.7 Was it the Canadian soldier here in court or someone else?

A.7 No

Q.8 What was his name, do you know?

A.8 No

Q.9 Do you know it now?

A.9 Yes, Kozak.

Q.10 No the accused?

A.10 No.

Q.11 What happened then?

A.11 Kozak brought me by the arm and brought me in the big room. Around the table were sitting my father and mother my sister and a woman of the neighbourhood. I understand from Kozak I had to sit down on a chair.

Q.12 Do you see the other Canadian soldier in court, the one in the corner on the chair?

A.12 Yes (Identifies the accused)

Q.13 Go on please.

A.13 I did not want to sit down but my father told me to sit down. I was not allowed to speak. When someone was talking both the soldiers had a fighting attitude with the pistol, this soldier pointed to my watch and I gave him the watch.

Q.14 Who was that, this accused?

A.14 Yes.

Q.15 His name is Russell, try to call him that. Why did you give him the watch?

A.15 I could not do anything and I like to give my watch before they shoot me down.

Q.16 Were you afraid of being shot down?

A.16 Yes I was afraid for the pistol had a fighting attitude.

Q.17 Who was holding the pistol?

A.17 Both of them.

Q.18 Go on please.

A.18 Kozak walked the room ~~up and~~ down and as soon as someone moved or was talking Kozak had a fighting attitude with the pistol.

Q.19 Just what do you mean by this fighting attitude with the pistol? I suppose this would be a threatening or menacing attitude, is that correct?

A.19 Most of the time they both had a pistol in the hand, and sometimes it was laying before them on the table.

Q.20 This fighting attitude would it be a menacing manner?

A.20 It was ferocious.

Q.21 Go on from there?

A.21 Kozak took my by the arm and said I would go with him, I went with him to the small hall.

Prosecutor This evidence that I am introducing is admissable as it bears on the question of consent. It involves the previous incident I know. Do you feel it is reasonable

Defence So far I have no objection.

Q.22 If so, I will make it known, he took you upstairs, tell the story from there?
A.22 Kozak was up in my room and the door opened and Russell came in.
Q.23 Just tell what happened please from the time you went upstairs and Russell came in?
A.23 I cannot tell other than what I said before.
Q.24 Explain to her interpreter that this is a deparate trial and it is just as if nothing had been said in the other case, and as if the other case had not been before the court.
A.24 The witnesses breaks down and the presecutor requests that the be allowed to stand down while other witnesses are heard.

THE COURT ALLOWS THIS WITNESS TO STAND DOWN

SECOND WITNESS for the Prosecution — Georg Dahmen, Harst Wessel, Meppen, Germany having been duly sworn is examined by the Prosecutor:

Q.25 Your name is Georg Dahmen and you live at Harst Wessel in Meppen, Germany?
A.25 Yes, that is correct.
Q.26 I understand you are a manufacturer?
A.26 I am a merchant now with my father.
Q.27 On the afternoon of 10th April, this year I understand you were called by your sister in law to your father in law's home at Paul Strasse 6?
A.27 Yes.
Q.28 Will you tell the court what you saw on arrival there?
A.28 I came in and met Herr Bornheim at the front door, and asked where my wife was, he told me she was upstairs, so I went up and saw Lt Walker in the room of my wife, and her she was sitting before her bed. I asked her what had happened and she only cried, she could not tell me anything. Looking around in the room I saw this one (points to the accused)
Q.29 What was his state of dress?
A.29 He had his trousers in his hand and was putting them on and was standing on one leg.
Q.30 What was the state of dress of your wife?
A.30 She was dressed without shoes.
Q.31 Did you have any conversation with her?
A.31 No, I could not it was impossible.

CROSS EXAMINED BY THE DEFENCE

Q.32 In your mind was the accused drunk at this time?
A.32 No not this one, as I told you before.
Q.33 Prosecutor - Forget about the old trial this is a new one.
A.33 Yes, I am sorry, because he was standing on one leg and putting on his trousers.
Q.34 Did you notice if he had a gun or was armed?
A.34 I could not notice that.

QUESTIONED BY THE COURT

Q.35 You say you received no answer from your wife? When you asked her what was wrong she was not lucid at the moment?
A.35 Yes, sir.

Q.36 What actually happened?
A.36 She was crying and I asked her what happened and she said I cannot tell you, it was awful, awful.

COURT - Do you think the wife is sufficiently recovered to tell us now, or do you think it would be b tter if the husband stayed in now that his evidence has been taken.
PROS - I had that in mind myself.
COURT - On further thought there may be the odd incrimminating statement or question, if we could get her to tell it on her own let us try it without. What do you think Mr. Dahmen?
Witness- Yes I think so, I don't know exactly what happened.

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF R.P. 83 (B)

WITNESS WITHDRAWS

FIRST WITNESS FOR THE PROSECUTION FRAU ELFREIDE DAHMEN IS RECALLED

Q.37 This witness is already sworn, just start at the point please where you were in this room with Kozak and then when the accused first appeared first appeared, please start there?
A.37 When Kozak upstairs was with me then the door opened and Russell came in. He was talking with the other person and I did not understand him, I only heard Kozak say "another two minutes", Russell went downstairs, I could hear that and after two minutes he entered the room again and started to undress himself, pushed away Kozak and did the same with me.
Q.38 What did he do literally?
A.38 He raped me.
Q.39 Did he actually put his organ inside your body?
A.39 Yes.
Q.40 Did you fight or make a noise, or scream?
A.40 No.
Q.41 Why did you not?
A.41 I was scared if I did fight he would shoot me.
Q.42 He had a pistol but it was not on his body.
Q.43 Where was it?
A.43 The pistol was on a chair.
Q.44 What happened after that?
A.44 After that I got up and dressed myself.
Q.45 When. Did anyone else come to the room?
A.45 When I started to dress myself, I was sitting on the bed, the door opened and an officer came in, I forget that Kozak came in another time before the officer entrered the room.
Q.46 What did Kozak do?
A.46 He entered the room when I was dressing and pointed out with gestures I was to undress myself again.
Q.47 Did he go out of the room or did he stay in the room?
A.47 He remained in the room and I was sitting on the bed and Kozak was standing before me and then the door opened and the officer came in and he came right up to Russell.
Q.48 What did Kozak do?
A.48 Kozak must have left the room. I don't know exactly what happened I only know the officer entered the room.
Q.49 Did anyone come upstairs with the officer?
A.49 I think there was another one, he wore a black hat.
Q.50 Did your husband come?
A.50 Yes, I heard my husband downstairs and I called to him and he came.

Q.51 Did you tell anyone at that time what had happened?
A.51 Yes, my husband.
Q.52 What did you say, what were your words, do you remember?
A.52 I told him the whole story, and told him that this man had raped me.
Q.53 Did you tell him this at that time in the house?
A.53 No, I told him that night.
Q.54 What did you say to your husband then and there in the room?
A.54 My husband entered the room and he was pretty nervous and he asked if they did something to me and I said yes.

CROSS EXAMINED BY THE DEFENCE

Q.55 When Russell pointed to your watch did he have his pistol in his hand or merely on his side.
A.55 No he did not have his pistol in his hand.
XXXX

Q.71 No, why did you go up to the room in the first place?
A.71 I went up to my room for in my room were two chairs, it was a living room and bedroom at the same time.
Q.72 Why did you go upstairs at all?
A.72 I had to go because he grabbed me by the arm?
Q.73 Did you see the accused, can you tell us briefly what you saw of the accused only downstairs, what was he doing?
A.73 Most he was sitting in a chair and Kozak was speaking, he appeared to be the person who had to say most.
Q.74 What was the accused doing?
A.74 The accused only did what Kozak said and he watched us when we were moving or standing up
Q.75 Will you clear that up, did he just watch you or something else?
A.75 As soon as somebody was moving in the room he drew his pistol and pointed it out to several people in the room.
Q.76 When you left the downstairs where was your father in the room?
A.76 When I left the first time or the second time?
Q.77 The second time?
A.77 My father was lying on the floor.
Q.78 And Mr Bornheim, where was he?
A.78 Mr Bornheim was lying beside my father in the same attitude
Q.79 Under what circumstances did they come to be in that attitude?
A.79 Kozak came into the room from the writing room, he was carrying a radio set, he threw the radio set on the sofa and pushed my father on it.
Q.80 Where was Russell?
A.80 He was sitting on a chair in the corner.
Q.81 Did he have his pistol in his hand or in his holster at the time?
A.81 I cannot tell you that exactly, but I think it was on the table in front of him.
Q.82 Continue from there, from where you left off, Kozak forced your father on the sofa?
A.82 Kozak got my father and put him on his legs and showed him he had to undress his waistcoat and jacket.
Q.83 How did he get on the floor?
A.83 He took away my father's stuff, he was saying in English to my father and he did not understand, to lay on the floor, and he showed him.
Q.84 Your father did lay on the floor?
A.84 Yes.
Q.85 You say you went upstairs because he took you by the arm, who do you mean by he?
A.85 Kozak.
Q.86 He took you upstairs into what room?
A.86 He went to the room of my parents and I went straight to my own room and he followed in behind me.
Q.87 Why did you go upstairs with him?
A.87 He grabbed me, I could not leave the house, so I had to go upstairs with him.
Q.88 Why could you not leave the house?
A.88 I was afraid I would be shot if I tried to do anything like that.
Q.89 Did you believe your would be shot if you ran away?
A.89 Yes I believe that I would.
Q.90 Xxx Now you went upstairs and Kozak followed you into your room?
A.90 Yes.
Q.91 What did he do then?
A.91 No answer

JA Would you explain to the witness the only reason she is being questioned again on this is to make the story come out in the proper order in the record.

Q.92 Tell us briefly what happened when you came into the room with Kozak?
A.92 I was sitting on the chair and he was standing in front of me and after a while he pointed out to the bed. I did

not want to do that and I told him to let me sit in my own chair. Then he pointed to the bed and ordered me that I would lay down on the bed. Then I sat down on the bed and he said to me I should undress myself. I did not want to do that and he caught me by the jumper and I was scared if I did fight I would be shot down. After that I undressed myself and after that he raped me.

Q.93 You have said that Russell came into the room and Kozak said another two minutes, is that right?
A.93 Yes
Q.94 At that time was Kozak having sexual intercourse with you or had he finished?
A.94 No, he had not finished.
Q.95 You said Russell came back into the room a few minutes later?
A.95 Yes.
Q.96 Where was Kozak when he came into the room?
A.96 He was always with me.
Q.97 Where in the room was he when Russell came in the second time, on the bed or standing up by the bed.
A.97 In the bed.
Q.98 When Kozak finished this sexaual intercourse, Russell was already in the room then?
A.98 Yes. Meanwhile he undressed himself.
Q.99 Russell undressed himself while Kozak was still having sexual intercourse with you?
A.99 Yes.
Q.100 When Kozak completed the act he left the room?
A.100 Yes.
Q.101 Did Russell then come into the bed with you?
A.101 Yes at once.
Q.102 Did you see whether or not Russell had a pistol when he came into the room?
A.102 Yes he had a pistol in his belt.
Q.103 Did he have it out at any time in there?
A.103 No, he did not.
Q.104 Why did you not fight Russell to prevent him having intercourse with you?
A.104 I could not do it because I cannot fight against a man and I had to think that he would shoot me down.
Q.105 Did he threaten you with a pistol at any time?
A.105 No he did not.

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH PROVISIONS OF R.P. 83 (B)

WITNESS WITHDRAWS

THIRD WITNESS for the Prosecution — Paul Stachlschmidt, Paul Strasse 6, Meppen, Germany, having been duly sworn is examined by the Prosecution

Q.106 Your name is Paul Stahlschmidt, of Paul Strasse 6, in Meppen, Germany?
A.106 Yes.
Q.107 You are a German civilian and an inhabitant of Germany?
A.107 Yes
Q.108 You are the father of the woman Frau Elfreide Dahmen?
A.108 Yes
Q.109 On the 10th of April this year were you in your home in Meppen, Germany?
A.109 Yes.
Q.110 What time did you go to your home?
A.110 It was between two and three o'clock in the afternoon.

Q.111 Who did you find there when you got there?
A.111 In the house were four Canadian soldiers.
Q.112 Look around the court and see if you recognize anyone that was there?
A.112 Yes (Identified the accused)
Q.113 Just tell us what was going on?
A.113 When I entered the room the four soldiers were sitting on chairs and there were two bottles on the table, one of the soldiers, he was in here this morning, ordered a couple of glasses, I fetched down the galsses and the one who was in here this morning ordered schnappes. I did not want to get it, but my older daughter fetched two bottles with some schnappes. He ordered me to fetch down another two glasses, poured out of the bottle and ordered my wife and me to drink, then after that he took the second bottle and we had to drink again. After that he started to open my writing desk, and then he searched it. Meanwhile, he discovered in my writing room my shot gun which was ready to turn in, and then he came to the room with the small rifle and ordered me to get the ammunition and then he loaded the rifle and fired a shot into the ceiling.
Q.114 What then?
A.114 When someone was talking he shouted at them. Then my youngest daughter entered the room and the one who was here this morning pushed her into the room and made her sit down in a chair, and then after a while he took out of the room my youngest daughter.
Q.115 What is her name?
A.115 Elfreide Dahmen. He then returned with her to the room and he did not appear to do something to my daughter and my daughter told me he is not so bad. Then he had a talk with my granddaughter he took her beside him and was very nice to her and offered her a bar of chocolate Then at once he jumped up and shouted something in the room and I had a feeling he said it is different now.
Q.116 Who is the he through all this?
A.116 It is the one that was this morning in here,
Q.117 Where was the accused at this time?
A.117 The accused was sitting in the corner and trying to talk to my eldest daughter who could speak a littel school English and then he ordered me to go in my writing room and his pistol was out.
Q.118 Which one ordered you?
A.118 The one from this morning.
Q.119 Where was he when he did this?
A.119 It was in the same room in the big room.
Q.120 Was the accused there?
A.120 Yes, the one Kozak pulled his pistol and ordered me to to to my writing room where my radio was.
Q.121 Did you come back to the room where Russell was?
A.121 When I entered the room again the accused was watching us, then Kozak went upstairs with my daughter. I was on the floor at that time.
Q.122 How did you get to the floor?
A.122 Kozak ordered me to lay down on the floor, before that he took all my stuff and my waistcoat and jacket.
Q.123 Was Russell present when Kozak ordered you to lay on the floor?
A.12 3 Yes.
Q.124 Did anyone else come i to the room at that time ?
A.124 Herr Bornheim entered the room and had to do the same thing
Q.125 Were any goods taken away from anyone that you saw?
A.125 I did not see that I only heard Herr Bornheim ask for them to give back his wife's jewels.
Q.126 Did you see anything taken from anyone else?
A.126 My watch which I gave him, my pocket knife and my hunting dagger and my keys.

Q.127 Who got these?
A.127 Kozak
Q.128 Were these taken from you in the room where Russell was?
A.128 Yes.
Q.219 Was anything taken from anyone else there?
A.129 I cannot tellyou that.
Q.130 What happened after that, you are lying on the floor, Kozak has gone upstairs with your daughter.
A.130 After that Herr Bornheim had to lay down beside me the accused watched us and as soon as someone moved he was shouting and had his pistol in his hand. Herr Bornheim succeeded in getting away when the accused did not watch him. He was getting behind Herr Bornheim and after came back and was sitting on a chair, and then he ordered my wife and the woman of the neighbourhood and my daughter to lay down beside me. He watched us always with his pistol out, and after a while he stood up and went to the door and I heard he went upstairs. After a moment he came back. After a moment he stand up again and went out of the room and went upstairs, I heard him climb the second part of the stairs.
Q.131 Then what did you do?
A.131 After that I jumped up, opened the window and jumped out and went away, I wanted to go to my son-in-law who speaks very good English and we want to go to a unit somewhere.

CROSS EXAMINED BY THE DEFENCE

Q.132 These drinks that were offered and that you had to drink, were they the first ones out of the bottle?
A.132 Yes
Q.133 At the time the accused Russell came to your house, when you came in did he seem drunk?
A.133 No he was not.
Q.134 At any time during his stay there would you say he appeared drunk?
A.134 I could not notice it. Both knew what they were doing.
Q.135 From their actions did it at any time appear that they had been drinking previously rather than drunk?
A.135 No
Q.136 What happened to the other two soldiers you mentioned?
A.136 The other soldiers went out of the room, they were ordered to go out of the room, and then I heard them go upstairs and then downstairs, and I did not see them after that.
Q.137 Who seemed to be the leader of this group?
A.137 Kozak, he did the talking.
Q.138 Did Kozak give you the impression he was looking for firearms, or radios, or anything like that?
A.138 I put it on the paper on my door, I know that Kozak reads the paper on the door, where my radio, hunting rifle was ready to turn in.
Q.140 Did Kozak give you the impression that at any time he was looking for your guns, radios, cameras, or anything like that?
A.140 No, the first time, no.
Q.141 Do you remember telling your daughter to acede to the wishes of one of the soldiers when he told her to sit down when she entered the house?
A.141 No, not at all.

IN THE OPINION OF THE COURT AND OF THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF R.P. 83 (B)

WITNESS WITHDRAWS.

FOURTH WITNESS for the Prosecution — Hermann Bornheim, Paul Strasse, Meppen, Germany, having been duly sworn is examined by the Prosecution

Q.142 Your name is Hermann Bornheim and you reside at Paul Strasse 4 in Meppen, Germany, is that correct?
A.142 Yes
Q.143 I understand you are a retired major in the police force?
A.143 Yes.
Q.144 On the 10th of April this year did yougo to the house of your neighbour at Paul Strasse 6?
A.144 Yes.
Q.145 About what time?
A.145 It was about 4 O'clock or 4:30
Q.146 Who did you find there?
A.146 Both soldiers who are accused today and the family of Stahlschmidt.
Q.147 How many soldiers were there?
A.147 Two soldiers.
Q.148 Do you see any of them in this court?
A.148 Yes (Identifies the accused)
Q.149 What members of the family were there?
A.149 Herr Stahlschmidt, Frau Stahlschmidt, two daughters, the grandchild and a woman whom I do not know.
Q.150 What happened?
A.150 After Herr Stahlschmidt was order to lay down on the floor and I was robbed, the other soldier went out of the door with the daughter of Herr Stahlschmidt and ordered the other soldier to watch us. I was laying on the floor and I asked the soldier a couple of times if I could go away.
Q.151 Which soldier?
A.151 The other soldier was upstairs and this one was alone (pointed to the accused)
Q.152 How did you come to be on the floor?
A.152 The other soldier who was upstairs ordered me to lay down.
Q.153 Go on from there?
A.153 I was thinking about fleeing somewhere and I saw that one door to the other room was open and jumped up and ran throughthe door and went away through the garden on the street. When I was fleeing I heard someone calling on me, but if he came behind me I do not know.
Q.154 You do not know who it was?
A.154 It must be that soldier he was the only one in that house I do not know what he was telling me for I do not understand
Q.155 Did the accused have any weapon when he was shouting at you?
A.155 Yes, he had his pistol out.

CROSS EXAMINED BY THE DEFENCE

Q.156 During this little episode on the 10th was there anything to lead you to believe that the accused had been drinking?
A.156 He had been drinking something but he was not drunk.
Q.157 I Did he act as though he were under the influence of liquor,
A.157 I could not tell you for he was sitting on the chair.

IN THE OPINION OF THE COURT AND JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH PROVISIONS OF R.P. 83 (B)

WITNESS WITHDRAWS

FIFTH WITNESS for the Prosecution — Lieut. L.B. Walker, 221 Det Mil Gov 4 Cdn Armd Div having been duly sworn is examined by the Prosecutor

Q.158 Your rank, full name and unit please.
A.158 Lieut. Leonard Bryan Walker, 221 Det Mil Gov.
Q.159 On the 10th of April this year were you in the town of Meppen, Germany?
A.159 Yes, sir.
Q.160 As the result of a complaint made to you did you go anywhere?
A.160 I went to No. 6 Paul Strasse in company with Lieut. Boxseau.
Q.161 What did you find there?
A.161 I entered the house and could find no one downstairs, and went upstrirs and looked into a bedroom and there I saw L/Cpl. Russell.
Q.162 Was that the accused?
A.162 Yes, he was lying face down on the bed, I pushed the door open and entrered the room, he was then commencing to climb off Frau Dahmen, who was lying face upward underneath him. He was clad only in his vest and underpants, she was clad in a vest and stockings. I notice that his penis was exposed, partly erect and was steaming. He stood at the side of the bed and looked at me. The girl looked at me and spoke in German, but I did not understand her, but from her actions I felt that she was appealing for help. I told the Cpl. to dress. His clothes were lying on the floor and he was almost dressed when I noticed weapons on the floor under his clothes. I took possession of the weapons which consisted of one German P.38 revolver, which was loaded with one in the breach, one colt type revolver fully loaded with the exception that one cartridge was only a blank shell, and the blank shell was at 120'clock and there was a .22 rifle which had one round in the breach and two in the mag. The two revolvers w were in holsters and had web belts attached. Having taken possession of the weapons, I heard Frau Dahmen crying and on looking around I saw that she had commenced to dress, her clo clothes being scattered on the bed. Her husband then came into the room, made himself known to me and I requested him to ask his wife exactly what had happened because she only spoke German and he spoke English. He spoke to his wife then turned to me and said
Q.163 Did he say this in the presence of the accused?
A.163 Yes
DEFENCE - I don't think this is admissable because he asked the question in German which the accused does not understand.
JA — What the husband said was in English and well understood by the accused.
Q.164 Continue
A.164 My wife says she has been raped by this soldier and by one other.
Q.165 Was the accused standing there at the time?
A.165 He was there.
Q.166 What did he say?
A.166 He was dressing but he said nothing. I took the accused to one side after he had finished dressing and left the woman to her husband who was crying and told the accused of the compalint received, that this woman said he had raped her. I cautioned him, I said, You are not obliged to say anything in answer to the compalaint but anything you do say I shall take down inwriting and it may be used in evidence. I then said do you wish to say anything to explain your presence here. He made no reply. The husband then said to me, my wife states that the soldier has stolen her watch from her wrist. I turned to him and said have you taken the watch. He said no. I told him to empty his pockets and from the first pocket on the left breast he produced a gold wrist watch and bracelet, which the wife identified as hers.

Q.167 Then what happened to the watch?
A.167 I retained it until after the orderly room and was instructed then to hand it back. I then took the accused into custody and while talking to the husband I saw the accused running downstairs. I gave chase and he ran into the road and I lost sight of him for a while. At that time I was still carrying the rifle and pistols, and I saw fresh footprints through a fresh dug flower bed, and I threw the weapons under a bush and followed across several gardens and saw the accused running across a field. I overtook him and stoped him about 400 yards away from the house. I was walking him back towards the detachment office and an officer with a jeep overtook us going towards the office and I requested his assistance, put the accused in the jeep and going towards the office I saw Lt. Boxseau proceeding towards the office with Kozak and took them into the jeep and proceeded to the office. I then communicated with the 2 i/c of the accused's regiment, Major MacKenzie.

Q.168 What did you do after that?
A.168 I returned to the house and found in the sitting room a fresh hole in the ceiling and particles of plasteron the back of the settee. On the table were five or six glasses, and four bottles, one contained liquor similar to conyac, one red wine, and another bottle containing conyac, and one of vermouth all partly consumed.

Q.169 What was the condition of the house?
A.169 It was in good condition except the contents of the drawers were strewn around the rooms.

CROSS EXAMINED BY THE DEFENCE

Q.170 What was the condition of the accused with reference to alcohol?
A.170 He definitely had had something to drink but he was far from drunk.

QUESTIONED BY THE COURT

Q.171 When you ordered the accused to turn out his pockets and he turned out this watch did he say anything?
A.171 He did not say anything.
Q.172 Did he say anything after?
A.172 He found one or two papers then handed me the watch.
Q.173 Did he not say one word from the time you entered this room?
A.173 Not one word.

IN THE OPINION OF THE COURT AND OF THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH PROVISIONS OF R.P. 83 (B)

WITNESS WITHDRAWS

SIXTH WITNESS for the Prosecution — Lieut. G.T.J. Boxseau, Netherlands Army att 4 Cdn Armd Div having been duly sworn is examined by the prosecutor:

Q.174 You are Lieut G.T.J. Boxseau, Netherlands Army attached to 4 Cdn Armd Div?
A.174 Yes
Q.175 On the 20th of April this year did you go in company with Lieut Walker to Paul Strasse 6 in the town of Meppen, Germany?
A.175 Yes.
Q.176 What did you find there?
A.176 We found nothing downstairs and went upstairs and I found a soldier in a bedroom.
Q.177 Was it the accused?
A.177 No.

Q.178 What happened next?
A.178 He went downstairs and I brought him back, and then in another bedroom I saw the accused and Lieut. Walker and a woman who later proved to be Frau Dahmen, she was dressed in underwear and vest and the soldier was getting dressed. The girl was crying and seemed very excited. Lieut. Walker told the soldier to dress himself and the girl asked about a gold wrist watch and I heard Lieut. Walker ask the soldier and the soldier took it out of his pocket and gave it to Lieut. Walker. Then the husband came in, I did not understand all that was said but I understood the girl was saying about being raped.
Q.179 What language was she speaking?
A.179 German
DEFENCE - That would be inadmissable.
PROSECUTION - It would be evidence of early complaint
A.180 She did not say it exactly.
Q.181 What were the words she used?
A.181 She did not say he raped me she said, He was it who took me.
Q.182 What happened after that?
A.182 When the soldier was dressed Lieut. Walker ordered him to go downstairs and in a few minutes I missed him and saw them running downstairs. Mrs. Walker and I ran after them he went after the accused, and later I met them on the street and he had the accused and then we went to the office of the soldier's unit.

CROSS EXAMINED BY THE DEFENCE

Q.183 Did you accused seem to be under the influence of liquor?
A.183 I cannot say that I was not close enough to him.

IN THE OPINION OF THE COURT AND OF THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF R.P. 83 (B)

WITNESS WITHDRAWS

THE PROSECUTION IS CLOSED

CLOSING ADDRESS OF THE PROSECUTION

If it please the court the first charge is rape. I don't intend to deal with any of the evidence at great length, the judge advocate will advise you as to the law. You have seen the complainant and you have heard her story. She alleges that she was raped, that there was penetration. There is evidence of fresh complaint, and there is co-oboration of the strongest character and it is surpluous to say anything further.

That eliminates at the same time the second charge.

With regard to the third charge I submit that it is a fact of which the court can take knowledge of under RP 74 in respect to fraternization. It has been proven that the accused was in the house of a German civilian and he was conversing with members of the family. It is true that at ti es he was menacing this family, but at other times he was drinking and conversing with civilians. It is my contention that is fraternization.

With regard to the fourth charge of robbery with aggravation, is robbery under circumstances, I think the JA will say that the threat of firearms if robbery with aggravation. As I recall it, the accused did not have a pistol in his hand when he took the watch, however, he was carrying a pistol and there were two armed soldiers in the room, the arms had been freely displayed and pointed at various people, and I submit that robbery under these circumstances is robbery with aggravation. The robbery is proved in t that there is the evidence of the complainant and evidence that the accused had the watch, it was taken from him by Lieut. Walker. It is my submission that the first, third and fourth charges have been proven.

CLOSING ADDRESS OF THE DEFENCE

With reference to all the charges, I must point out to the court that the witnesses in the most are German people, members of the Reich, and their evidence no doubt will be somewhat biased against any allied soldier. This must be given consideration when considering this case.

With reference to the first charge the defence is taking no issue that there was the actual act. Of course the only thing to bring in the question, is the question of consent and what actually means consent in the case at bar. There was another soldier previously who was upon the same charge before the same court and the facts in his case may be considered, that the girl when she went upstairs with him was under a certain amount of duress, and she allowed this chap Kozak to have intercourse under the circumstances. However, ~~in~~ in the case of the accused the circumstances are somewhat different and it is a question of fact whether or not there was consent. The circumstances are that the accused goes into the room and there is his comrade who is having intercourse and the sight in itself plus the fact he had been drinking, excited him and naturally he wishes to fall in line and starts to undress and at the first chance gets into bed with the girl. She makes no overt act to stop him. The only evidence as to her condition of mind was that she was still frightened of the pistol which the accused might have and I bring to the attention of the court it is part of the dress of a soldier to be armed. He had brought it out on one occasion but that was to stop any movement in another room. At this time then, I wish to submit to the court that the girl by her actions in this case didnot make any move of not consenting to the act. I think she was really past the stage of thinking whether or not in this case the accused would shoot her or her father and the fact that she did not cry or scream amounts to a form of consent. Consent in a case of this type would not be one that has to show openly that she is willing and that is the case at bar.

As to fraternization, the accused took little or not part in the affair, he sat in the corner on a chair. The only time he had anything to do with it was when the men were lying on the floor and he was standing and when they moved then his pistol came into evidence. I submit that is far from any definition of fraternization. The evidence shows they were looking for firearms or wireless, and it would be reasonnable for the court to assume that the accused felt they were doing a military duty rather than being friendly with civilians.

The fourth and last charge is one where robbery took place, robbery with aggravation, is the charge itself, and it is my submission here that the evidence shows the girl gave him the watch when he pointed to it. There was no action on his part to take the watch, he pointed to it and she handed it to him. The evidence shows that when the girl entered the room and was told to sit down she obeyed when told to by her father. I submit that this is a girl who always obeyed her father and she felt that whatever happened after that she was to acede to it, and when the accused pointed to her watch, she saw he wanted it and gave it to him. I feel that does not come within the meaning of robbery with aggravation, and such is my submission to the court.

SUMMING UP BY THE JUDGE ADVOCATE IN THE CASE OF B.45809(L/Cpl) Pte. Russell, L.W. - A & S H of C

Sir, the court must now determine what facts have been proven. The evidence is not excessive in quantity and the issues are quite clear cut. The most confusing element in this case is the fact that the court has only today completed the hearing of another case very similar in the evidence and in the charges. I therefore must emphasize the necessity of the court eliminating from their minds all evidence given in that case and likewise the addresses by the Prosecuting and Defending Officers and the summing up by myself.

Because of that last fact I must now sum up in this case as if no other case had been heard. On those questions of fact the court is of course the absolute and only judge. On questions of law I must advise the court and the court should follow the advice of the Judge Advocate.

The first charge is a charge of rape, that in Germany on the 10th of April the accused had carnal knowledge of Frau Elfreide Dahmen without her consent. Carnal knowledge is complete upon penetration to any extent. The definition of rape is the act of a man having carnal knowledge of a woman who is not his wife without her consent, or even with her consent, when such consent has been exhorted by fear of death or bodily harm. The fact that a woman has consented to submit to an act of sexual intercourse is definitely a factor to be considered whether or not the voluntary consent has been given, but submission in itself does not necessarily prove voluntary consent. There has been conflicting evidence with regard to an early complaint made by the girl in this case. It will be for the court to determine whether or not the complaint was made at the earliest reasonable opportunity and if so what was the complaint of. If the court finds that there was in fact a complaint made by Frau Dahmen that this accused had raped her they can consider that fact in deciding whether or not such a complaint is consistent with the evidence which he tells and they may consider that complaint as evidence tending to disapprove consent. Such a complaint is not independant substantive of evidence of the facts contained in the complaint nor is it cooborative of the complainant's evidence. It is my duty to warn the court of a fact which in any event is self evidence namely, that it is most dangerous to convict an accused person of an offence of this nature upon the evidence of the complainant, unless it is cooborated in some material way by independant evidence. Such evidence may be direct evidence or it may be circumstantial evidence. In the latter case, however, it would not be considered cooborative if it were not consistent with one or more points of view. The cooboration must be evidence not coming from the complainant herself, and should cooborate not only the identify of the accused as the person applicated but also the fact that a crime has been committed. In this case the evidence of Lieut. Walker is evidence which cooborates the identity of the accused and the fact that an act of sexual intercourse took place. The weight to be given that evidence is a matter for the court. There remains the question of consent. The complainant has testified that she submitted to the act because of fear of being shot. It is quite proper for the court to consider not only the evidence they have here as to the accused's actions preceding the offence and subsequent to the offence and as to the conduct of the complainant herself immediately before and after, but it is also proper for the court to take Judicial notice of the fact that we are at war, the stage that war has reached and the relations existing between the German people and ourselves. A thorough consideration of all these factors must assist the court in deciding whether or not it is reasonable to accept the complainant's evidence, that

fear was engineered into her mind by the actions of the accused in the particular place and at the particular time that he did those acts. Much evidence has been produced relating only to the question fo consent and relevant only to the state of mind of the complainant. I particularly wish to point out that if the soldier Kozak is guilty of rape then this accused cannot be held in any way responsible for the act of Kozak in this trial, even though it has been admitted in evidence, its purpose is only on the question of the state of mind that the complainant had on this night. Similarly evidence of any offence or acts committed by Kozak downstairs before the offence took place are admitted in evidence not for the purpose of fixing responsibility for those acts on the accused, but in order to show what the state of mind of Frau Dahmen was and whether or not her explanation of her conduct is reasonable. Lt Walker has given evidence that her conduct is reasonable. Lt Walker has given evidence that he told the accused that the complainant had alleged that he had raped her and that the accused did not reply.
(The J.A. reads from page 84 MML)
If the court feel that on this occasion the circumstances were such that they called for a reply then it is open to them to find that because of Russell's silence he was to some extent admitting the truth of the allegation. I wish to point out however, that one of the circumstances which they must consider in determining whether or not a reply was called for, was that on the second occasion when Mr Walker repeated the accusation, he also advised the accused that he need not say anything.

With respect to the second and third charges, it will be necessary for the court to comprehend the scope of the policy of non-fraternization. If they find that the extent of that policy is a notorious fact, they do have power under the rules of procedure to take judicial notice of that policy. It is obvious that the standards of behaviour which we expect from a soldier vary from age to age and from time to time and the court must consider whether the act of the accused complained of in the second and third charges, under their own peculiar circumstances, is such that it is culpably improper I want particularly to point out that the wording of the third charge is such that the court has to decide on that charge, whether the actions of the accused in the living room downstairs were culpably improper. They are deciding whether his actions in drinking and conversing with the civilians was in fact fraternization, that no matter how reprehensible his actions were, he could not be found guilty of the third charge as it is worded, however, in deciding whether or not he was fraternizing I again emphasize that the court must consider the evidence heard in this case and not be influenced by any other evidence

With respect to the last charge:-
(JA reads from Archbolds' page 597)
It is not necessary that the good be removed by forcible or physical act of the accused. It is sufficient to prove the crime of robbery if the evidence is such as to satisfy the court that the complainant was in such an apprehension of danger as to induce her to part with her property and that she delivered them up through fear and apprehension caused by the accused. In this case the charge is robbery with aggravation. That differs from simple robbery in that it is necessary to prove that the person at the time of the robbery was armed or had an offensive weapon. Provided the elements in the definition of robbery are present, it is only necessary to prove that he used that weapon in a threatening manner.

It only remains to advise the court that the accused is innocent until he is proven guilty and the onus of proof remains on the Prosecution throughout, not only to prove the guilt of the accused but to prove his guilt beyond all reasonable doubt. A reasonable doubt is not a remote possibility that a cowardly court might clutch at for acquittal. It is a doubt of some substance. This term which is incapable of a

precise definition, but it is one that can be comprehended without difficulty. If there remains in the minds of the court a doubt as to the accused's guilt then he must be given the benefit of that doubt.

Is there anything further you wish me to say Mr. President?

NO

And you Capt Wasson

No, that covers it

And you Capt Lewis

NO.

FIRST WITNESS for the Defence — Capt. W.H. Mills, Argyle and Sutherland Highlanders of Canada, having been duly sworn is examined by the Defence.

Q.1 Do you know the accused in this case?
A.1 I do.
Q.2 How long have you known him or of him?
A.2 Since July, 1940
Q.3 How long has he been with your Regiment?
A.3 Since July 1940
Q.4 What is his general character in the Bn?
A.4 Very good. Q.5 Do you know anything about his ability?
A.5 I am interested in him as Coy Comd and I usually make inquiries about the progress and I have been informed on different occasions that he is very willing and cooperative.
Q.6 Is he the type of man you would be willing to have with the Regt?
A.6 Yes.
Q.7 Would you like to have him back?
A.7 Yes
Q.8 Do you know anything about his honesty?
A.8 I have no reason to doubt his honesty.

THE PROSECUTION DECLINES TO CROSS EXAMINE

IN THE OPINION OF THE COURT AND OF THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH R.P. 83 (B)

WITNESS WITHDRAWS

PLEA IN MITIGATION

The case has been before the court and the circumstances surrounding it for the better part of the day. However, there are a few points which I think should be taken into consideration by the Court in considering the sentence.

Facts about the person of the accused, are, he is 23 years, 11 mos old and joined his present unit in July 40 and has been with them since that time. He is a L/Cpl. and must have had some ability. The character witness has pointed out to the court that he had been very good. I think that should be taken into consideration. He was with the unit in Jamaica and in England and up to the time of the attack at Meppen. He has been well forward on many occasions and has done everything that a soldier could do and has been a very good soldier. His parents are living in Canada and there has been some family trouble which may have to some degree influenced him. The fact that this mother and father have separated, his father is a retired medical practitioner. Quite recently his mother has left his father and he has felt quite badly about the situation and wants to get home and see the family again. As the evidence pointed out this Kozak was the real leader the accused merely followed him, he is the type of person easily led and finds himself in this unfortunate position. However, I think the court would be in keeping with the general practice if they were to give the accused greater leniency in respect to sentence than the person he followed. Consideration must also be given to the fact that the accused had been drinking and was not used to the wines and spirits of the continent. As pointed out in respect to the robbery there was no overt act, there was no threatening manner, he merely pointed to the watch and the girl gave it to him. I think that with all the circumstances of this case the court should deal with this accused as leniently as they possibly can do.

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

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

Number	Rank	Name	Regiment (or as the case may be)
B.45809	Pte. (L/Cpl.	Lawrence William RUSSELL	A & S H of C

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

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

NO FIELD CONDUCT SHEET AVAILABLE FOR THIS MAN

For .... times

For .... times

For .... times

For .... times

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

3.* The accused at the present time is under sentence for ..... NA .....

beginning on the ..... NA ..... day of .....

4. The accused has been awaiting trial on the present charges for ..... days in civil custody; and for ..... 8 ..... days in military custody, making a total of ..... 8 ..... days of which ...DO... days were spent in hosp.

5. The present age of the accused is ..... 21 yrs 11 mos

6. The date of his attestation is ..... 8 July 1940 .....

7. The service which the accused is allowed to reckon is ..... 4 yrs 9 months .....

8.# The accused is in possession of

CVSM & Clasp

9. (If the accused is a warrant officer or NCO). The accused has served continuously, without reduction, to the present date -

	Date of Promotion
In the substantive rank of	Lance Corporal
In the war substantive rank of	.....
In the acting rank of	.....

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

* Strike out if not applicable

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

SCHEDULE OF CONVICTIONS BY A COURT - MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended
		NA		

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

Signed this 18 day of Apr 45

C F Boocock

Capt. Adj.

5K-152

FIELD GENERAL COURT-MARTIAL

CFA96 (To issue of AFA21)
4/38B

Convened by Order of Brig J.C. Jefferson Comd 10 C.I.B. dated 15 Apr 45

ACCUSED.

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

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B 45809	Pte	L/Cpl	Lawrence William	RUSSELL	A & S H of C

CERTIFIED TRUE COPY

.....

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) Germany on (*date(s)*) 18 Apr 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

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

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

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

A3. The Court is opened. The accused is (are) brought before the Court. At 1 9 Y 5 hours trial commences.

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

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

A5. President to accused: Do you object to 102707 Sgt Van Bruggen as interpreter? Ans No

The Interpreter is sworn.(1) Do you object to M11436 S/Sgt Elliott as shorthand writer? Ans No

The shorthand writer is sworn.(1)

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

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

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

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

President	Maj	G.L. Cassidy	Alq R
Member	Capt	J Kidd	L & W R
Member	Lt	W.W. Solkin	Alq R
Judge-Advocate	Capt	D.C.Dean	2 Cdn Corps
Prosecutor	Capt	E.E. Wasson	4 Cdn Armd Div
Defending Offr	Capt	D.E. Lewis	HQ 10 C.I.B.

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 105; duty of Prosecutor see RP 60(A) (ii); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; securing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(II), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 85, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

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

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

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

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

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. No. Do you intend to call witnesses on your behalf? Ans. No. ~~Are they witnesses as to character only?~~ Ans.....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

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

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

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the first & fourth charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (5), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true ~~copy (copies) of Conduct Sheet(s)~~(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. A and ~~B, respectively~~.
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 550. If above documents not produced, see RP 46 fn 1 para 1.)

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

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(5), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

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

Accused: B 45809 Pte (L/Cpl) Lawrence William Russell A & S H of C

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 41	Not Guilty	Guilty	
2nd AA Sec 40 Alternative	Not Guilty	Not Guilty	
3rd AA Sec 40	Not Guilty	Not Guilty	
4th AA Sec 41	Not Guilty	Guilty	
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 153, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for ... beginning on (date) ...~~ (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 6 days, of which nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.T.)

Sentence Awarded by the Court:

To suffer penal servitude for the period of five years and to be discharged with ingnominy from His Majesty's Service

(Sgd) D.G.Dean Capt — Judge-Advocate, if any. | 18 Apr 45 — Date awarded. | (Sgd) G.L. Cassidy Major — President. (RP 45, 50.)

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

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

"Reserved for confirmation"

Date 26 Apr 45 (Sgd) "JC Jefferson" Brig Commanding 10 Can Inf Bde

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

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567 577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

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

"Confirmed"

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) "HDG"
(1. AA 57A. Delete if not used.)

(Sgd) "H D G Crerar" Lieut-Gen

Date 10 May 45

~~Commanding~~ GOC in C First Cdn Army
Confirming Officer

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

Accused.	Date.	Signature of Offr.
"B 45809 Pte Russell, LW"	23 May 45	"A J S H of Can"

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

18 Apr 45

I hereby certify that I have this day examined L/Cpl Xxxxxxl Lawrence William Russell, B 45809 and in my opinion he is fit to undergo court martial.

"H.????????Ca t
RCAMC

HQ Sqn 4 Cdn Armd Div

FIELD GENERAL COURT-MARTIAL

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names	Surname.	Unit.
B 45300	Pte	L/Cpl	Lawrence William	Russell	A & SH of C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 15 Apr 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

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

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

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

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

PRESIDENT.

Maj (Rank.)	G.L. Cassidy (Must be named. RP 106.)	Alq R (Unit.)

MEMBERS.

Capt	J.L. Summers	29 Cdn Armd Recce Regt
Capt (Rank.)	J.Kidd (Named or detailed. RP 106.)	Linc & Welld R ~~29 Cdn Armd Recce Regt~~ (Unit.)

WAITING MEMBER.

Lt (Rank.)	W.W. Soltin (Named or detailed, if any. RP 106.)	Alq R (Unit.)

JUDGE-ADVOCATE.

Capt (Rank.)	Capt D.G. Dean ~~Eddy Wadson~~ (Must be named, if any. RP 106.)	2 Cdn Corps ~~4 Cdn Armd Div~~ (Unit.)

On Active Service in the Fd

in Germany (Country.)	"J.C. Jefferson" (Signed personally. RP 105 fn 2.)	Brig (Rank.)

Dat 15 Apr 45 Commanding 10 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 96 (In lieu of AFA 3) 40/P & S/1697 (6143) (See overleaf for oaths and notes for use on trial.)

CHARGE SHEET

The accused No. B45809 Pte (L cpl) Lawrence William RUSSELL, Headquarters Coy, 1st Bn The Argyll & Sutherland Highlanders of Canada, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Sec 41
Army Act

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

in that he in the field in Germany, on 10 Apr 45, had carnal knowledge of Frau Elfreide Dahmen, without her consent.

Second Charge
(ALTERNATIVE)
Sec 40
Army Act

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he in the field in Germany, on 10 Apr 45, did fraternize with Frau Elfreide Dahmen, a German civilian and resident of Germany, by having carnal knowledge of the said Frau Elfreide Dahmen with her consent.

Third Charge
Sec 40
Army Act

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he in the field in Germany, on 10 Apr 45, did fraternize with German civilians at the house Paul Strasse 6 by drinking and conversing.

Fourth Charge
Sec 41
Army Act

WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, ROBBERY WITH AGGRAVATION CONTRARY TO Sec 23(1)(a) OF THE LARCENY ACT 1916

in that he in the field in Germany, on 10 Apr 45, being armed with a pistol robbed Frau Elfreide Dahmen of one gold wrist watch.

In the field
14 Apr 45

(R D Mackenzie) Major
A/Commanding Officer
A & S H of C

To be tried by Field General Court Martial.

In the Field
15 Apr 45

(J C Jefferson) Brig
Comd 10 Cdn Inf Bde

First Witness for the Prosecution

Frau Elfreide Dahmen, Horst Wessel, Meppen Germany, having been duly sworn is examined by the Prosecution

Q.1 If there is no objection I will lead the witness in some parts in view of the hour and of the previous trial?
A.1 Defence I have no objection I will object if it goes to far.
Q.2 You are Frau Elfreide Dahmen, Horst Wessel, Meppen, Germany
A.2 Yes
Q.3 What is you husband's name?
A.3 Georg Dahmen.
Q.4 You are a German civilian and an inhabitant of Germany?
A.4 Yes.
Q.5 On the 10th of April this year at about 3:30 in the afternoon you visited your parents at Paul Strase 6?
A.5 Yes
Q.6 Please tell the court who was there when you arrived and what happened?
A.6 When I entered the home I met a Canadian soldier.
Q.7 Was it the Canadian soldier here in court or someone else?
A.7 No
Q.8 What was his name, do you know?
A.8 No
Q.9 Do you know it now?
A.9 Yes, Kozak.
Q.10 Not the accused?
A.10 No
Q.11 What happened then?
A.11 Kozak brought me by the arm and brought me in the big room. Around the table were sitting my father and mother mysister and a woman of the neighborhood. In a chair in a corner was another Canadian soldier. I understand from KozakI had to sit down on a chair.
Q.12 Do you see the other Canadian soldier in court, the one in the corner on the chair?
A.12 Yes (Identifies the accused)
Q.13 Go on please?
A.13 I did not want to sit down but my father told me to sit down. I was not allowed to speak. When someone was talking, both of the soldiers had a fighting attitude with the pistol, this soldier pointed to my watch and I gave him the watch.
Q.14 Who was that, this accused?
A.14 Yes
Q.15 His name is Russell, try to call him that. Why did you give him the watch?
A.15 I could not do anything and I like to give my watch before they shoot me down.
Q.16 Were you afraid of being shot down?
A.16 Yes I was afraid for the pistol had a fighting attitude.
Q.17 Who was holding the pistol?
A.17 Both of them.
Q.18 Go on please?
A.18 Kozak walked the room up and down and as soon as someone moved or was talking Kozak had a fighting attitude with the pistol.
Q.19 Just what do you mean by this fighting attitude with the pistol? I suppose this would be a threatening or menacing attitude, is that correct?
A.19 Yes. Most of the time they both had a pistol in the hand, and sometimes it was laying before them on the table.
Q.20 This fighting attitude would it be a menacing manner?
A.20 It was manner ferocious.
Q.21 Go on from there?
A.21 Kozak took me by the arm and said I would go with him. I went with him to the small hall.

Prosecutor This evidence that I am introducing is admissable asit bears on the question of consent. It involves the previous incident I know. Do you feel it is reasonable.

Defence So far I have no objection.

Q.22 If so, I will make it known, he took you upstairs, tell the story from there?
A.22 Kozak was up in my room and the door opened and Russell came in.
Q.23 Just tell what happened please from the time you went upstairs and Russell came in?
A.23 I cannot tell other than waht I said before.
Q.24 Explain to her interpreter that this is a separate trial and it is just as if nothing had been said in the other case and as if the other case had not been before the court.
A.24 The witnesses breaks down and the prosecutor requests that she be allowed to stand down while other witnesses are heard.

The court allows this witness to stand down.

Second witness for the prosecution

Georg Dahmen, Harst Wessel, Meppen, Germany having been duly sworn is examined by the Prosecution

Q.25 Your name is Georg Dahmen and you live at Harst Wessel in Meppen, Germany?
A.25 Yes, that is correct.
Q.26 I understand you are a manufacturer?
A.26 I am a merchant now with my father.
Q.27 On the afternoon of 10th of April this year I understand you were called by your sister in law to your father in law's house at Paul Strasse 6?
A.27 Yes
Q.28 Will you tell the court what you saw on arrival there?
A.28 Icame in and met Herr Borhheim at the front door, and asked where why wife was, he told me she was upstairs so I went up and I saw Lt Walker in the room of my wife, and her she was sitting before her bed. I asked her what had happened and she only cried, she could not tell me anything. Looking around in the room I saw this one (points to accused.
Q.29 What was his state of dress?
A.29 He had his trousers in his hand and was putting them on and was standing on one leg.
Q.30 What was the state of dress of your wife?
A.30 She was dressed without shoes.
Q.31 Did you have any conversation with her?
A.31 No, I could not it was impossible.

Cross examined by the defence

Q.32 In your mind was the accused drunk at this time?
A.32 No not this one, as I told you before
Q.33 Prosecutor - Forget about the old trial this is a new one
A.33 Yes, I am sorry, because he was standing on one leg and putting on his trousers.
Q.34 Did you notice if he had a gun or was armed?
A.34 I could not notice that.

Questioned by the court

Q.35 You say you received no answer from your wife? When you asked her what was wrong she was not l ucid at the moment?
A.35 Yes sir

Q.36 What actually happened?
A.36 She was crying and I asked her what happened and she said I cannot tell you, it was awful awful.

Court Do you think the wife is sufficiently recovered to tell us now, or do you think it would be better if the husband stayed in now that his evidence has been taken.
Prosecutor I had that in mind myself.
Court On further thought there may be the odd incrimminating statement or question, if we could get her to tell it on her own, let us try it without. What do you think Mr. Dahmen?
Witness Yes I think so, I don't know exactly what happened.

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

First Witness for the prosecution, Frau Elfreide Dahmen is recalled

Q.37 This witness is already sworn, just start at the point please where you were in this room with Kozak and then when the accused first appeared first appeared, please start there?
A.37 When Kozak upstairs was with me then the door opened and Russell came in. He was talking with the other person and I did not understand him, I only heard Kozak say "another two minutes", Russell went downstairs, I could hear that and after two minutes he entered the room again and started to undress himself, pushed away Kozak and did the same with me.
Q.38 Whatdid he do literally?
A.38 He raped me.
Q.39 Did he actually put his organ inside your body?
A.39 Yes.
Q.40 Did you fight or make a noise, or scream?
A.40 No
Q.41 Why did you not?
A.41 I was scared if I did fight he would shoot me?
Q.42 Did he have any weapon with him?
A.42 He had a pistol but it was not on his body.
Q.43 Where was it?
A.43 The pistol was on a chair.
Q.44 What happened after that?
A.44 After that I got up and dressed myself.
Q.45 Did anyone else come to the room?
A.45 When I started to dress myself, I was sitting on the bed, the door opened and an officer came in, I forget that Kozak came in another time before the officer entered the room.
Q.46 What did Kozak do?
A.46 He entered the room when I was dressing and pointed out with gestures I was to undress myself again.
Q.47 Did he go out of the room or did he stay in the room?
A.47 He remained in the room and I was sitting on the bed and Kozak was standing before me and then the door opened and the officer came in and he came right up to Russell.
Q.48 What did Kozak do?
A.48 Kozak must have left the room. I don't know exactly what happened I only know the officer entered the room
Q.49 Did anyone come upstairs with the officer?
A.49 I think there was another one, he wore a black hat.
Q.50 Did you husband come?
A.50 Yes, I heard my husband downstairs and I called to him and he came.

Q.51 Did you tell anyone at that time what had happened?
A.51 Yes, my husband.
Q.52 What did you say, what were your words, do you remember?
A.52 I told him the whole story, and told him thatthis man had raped me.
Q.53 Did you tell him this at that time in the house?
A.53 No, I told him that night
Q.54 What did you say to your husband then and there in the room?
A.54 My husband entered the room and he was pretty nervous and he asked if they did something to me and I said yes.

Cross examined by the defence

Q.55 When Russell pointed to your watch did he have his pistol in his hand or merely on his side?
A.55 No he did not have his pistol in his hand.
Q.56 When you were in the room previous to this time was he pointing his pistol around or was it always on his side?
A.56 As soon as someone was talking or made a movement he drew his pistol.
Q.57 He did not have it pointed at you when he took the watch?
A.57 No.
Q.58 After you were in the room with Kozak and Russell came in and Kozak left you did you make any movement to get up?
A.58 How do you mean movement.
Q.59 Did you start to get up and dress or anything like that?
A.59 No I did not.
Q.60 Just what did you do?
A.60 I do not understand.
Q.61 When Kozak left you was Russell at the immediate beside?
A.61 Yes at once.
Q.62 Did he make any attempt to hold you down?
A.62 I was not yet allowed to get up.
Q.63 Did you try to get up?
A.63 I don't know anymore, I was only scared.
Q.64 Did you start to cry anytime?
A.64 I was awfully nervous and scared and I did not know what to do.
Q.65 Did Russell appear to be drunk or very drunk?
A.65 He had drinks in the room downstairs.
Q.66 Did he seem drunk in the room upstairs with you?
A.66 He was not drunk anyway.
Defence At the summary of evidence her statement is "I hated the second soldier"
Prosecutor I think that is a mistake in the copying in the summary, that is a copy the defence has. The summary in the hands of the court is checked and reads"I noticed the second soldier was drunk and I pushed him away"
Q.67 In the summary of evidence the statement is made, the second soldier was drunk and I pushed him away, why did you make that statement then?
A.67 I did think about it later on if he was really drunk but he could be tired.
Q.68 Your statement at this trial is that he was not drunk, the one you made at the summary is incorrect?
A.68 I cannot tell I don't know the difference between drunk and under the influence, I only know if someone is fairly drunk.
Q.69 What would you say the accused was at this time?
A.69 I could tell you one person can drink five glasses and other ones can drink more.

Questioned by the court

Q.70 Will you tell briefly what happened when you camein the room in the first place?
A.70 I entered the room.

Q.71 No, why did you go up to the room in the first place?
A.71 I went up to my room for in my room were two chairs, it was a living room and bedroom at the same time.
Q.72 Why did you go upstairs at all?
A.72 I had to go because he grabbed me by my arm.
Q.73 Did you see the accused, can you tell us briefly what you saw of the accused only downstairs, what was he doing?
A.73 Most he was sitting in a chair and Kozak was speaking, he appeared to be ther person who had to say most.
Q.74 What was the accused doing?
A.74 The accused only did what Kozak said and he watched us when we were moving or standing up.
Q.75 Will you clear that up, did he just watch you or something else?
A.75 As soon as somebody was moving in the room he drew his pistol and pointed it out to several people in the room.
Q.76 When you left the downstairs where was yourfather in the room?
A.76 When I left the first time or the second time.
Q.77 The second time?
A.77 My father was lying on the floor.
Q.78 And Mr Bornheim, where was he?
A.78 Mr Bornheim was lying beside my father in the same attitude
Q.79 Under what circumstances did they come to be in that attitude?
A.79 Kozak came into the room from the writing room, he was carrying a radio set, he threw the radio set on the sofa and pushed my father on it.
Q.80 Where was Russell?
A.80 He was sitting on a chair in the corner.
Q.81 Did he have his pistol in his hand or in his holster at the time?
A.81 I cannot tell you that exactly, but I think it was on the table in front of him.
Q.82 Continue from where you left off, Kozak forced your father on the sofa?
A.82 Kozak got my father and put him on his legs and showed him he had to undress his waistcoat and jacket.
Q.83 How did he get on the floor?
A.83 He took away my fathers stuff, he was saying in English to my father and he did not understand, to lay on the floor, and he showed him.
Q.84 Your father did lay on the floor?
A.84 Yes.
Q.85 You say you went upstairs because he took you by the arm, who do you mean by he?
A.85 Kozak.
Q.86 He took you upstairs into what room?
A.86 He went to the room of my parents and I went straight to my own room and he followed in behind me.
Q.87 Why did you go upstairs with him?
A.87 He grabbed me, I could not leave the house, so I had to go upstairs with him.
Q.88 Why could you not leave the house?
A.88 I was afraid I would be shot if I tried to do anything like that.
Q.89 Did you believe your would be shot if you ran away?
A.89 Yes I believe that I would.
Q.90 Now you went upstairs and Kozak followed you into your room?
A.90 Yes
Q.91 What did he do then?
A.91 No answer
J.A. Would you explain to the witness the only reason she is being questioned again on this is to make the story come out in the proper order in the record.

Q.92 Tell us briefly what happened when you came into the room with Kozak?
A.92 I was sitting on the chair and he was standing in front of

Q.71 No, why did you go to the room in the first place?
A.71 I went up in my room because in my room were two chairs, it was a sleeping room and ~~main~~ living

me and after a while he pointed out to the bed. I did not want to do that and I told him to let me sit in my own chair. Then he pointed to the bed and ordered me that I would lay down on the bed. Then I sat down on the bed and he said to me I should undress myself. I did not want to do that and he caught me by my jumper and I was scared if I did fight I would be shot down. After that I undressed myself and after that he raped me.

Q.93 You have said that Russell came into the room and Kozak said another two minutes, is that right?

A.93 Yes

Q.94 At that time was Kozak having sexual intercourse with you or had he finished?

A.94 No, he had not finished.

Q.95 You said Russell came back into the room a few minutes later?

A.95 Yes

Q.96 Where was Kozak when he came into the room?

A.96 He was always with me.

Q.97 Where in the room was he when Russell came in the second time, on the bed or standing up by the bed.

A.97 In the bed.

Q.98 When Kozak finished this sexual intercourse, Russell was already in the room then?

A.98 Yes.

Meanwhile he undressed himself

Q.99 Russell undress ed himself while Kozak was still having sexual intercourse with you?

A.99 Yes.

Q.100 When Kozak completed the act he left the room?

A.100 Yes.

Q.101 Did Russell then come into the bed with you?

A.101 Yes, at once.

Q.102 Did you see whether or not Russell had a pistol when he came into the room?

A.102 Yes he had a pistol in his belt.

Q.103 Did he have it out at any time in there ?

A.103 No he did not.

Q.104 Why did you not fight Russell to prevent him having intercourse with you?

A.104 I could not do it because I cannot fight against a man and I had to think that he would shoot me down.

Q.105 Did he threaten you with a pistol at any time?

A.105 No he did not.

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Third Witness for the Prosecution

Paul Stachlschmidt, P aul Strasse 6, Meppen, Germany, having been duly sworn is examined by the Prosecution

Q.106 Your name is Paul Stahlschmidt, of Paul Strasse 6, in Meppen, Germany?

A.106 Yes.

Q.107 You are a German civilian and an inhabitant of Germany?

A.107 Yes.

Q.108 You are the father of the woman Frau Elfreide Dahmen?

A.108 Yes.

Q.109 On the 10th of April this year were you in your home in Meppen Germany?

A.109 Yes.

Q.110 What time did you go to your house?

A.110 It was between two and three oclock in the afternoon.

Q.111 Who did you find there when you got there?
A.111 In the house were four Canadian soldiers.
Q.112 Look around the court and see if you recognize anyone that was there?
A.112 Yes (Identifies the accused)
Q.113 Just tell us what was going on?
A.113 When I entered the room the four soldiers were sitting on chairs and there were two bottles on the table, one of the soldiers, he was in here this morning, ordered a couple of glasses, I fetched down the glasses and the one who was in here this morning ordered schnappes. I did not want to get it, but my older daughter fetched two bottles with some schnappes. He ordered me to fetch down another two glasses, poured out of the bottle and ordered my wife and me to drink, then after that he took the second bottle and we had to drink again. After that he started to open my writing desk, and then he searched it. Meanwhile he discovered in my writing room my shot gun which was ready to turn in, and then he came to the room with the small rifle and ordered me to get the ammunition and then he loaded the rifle and fired a s hot into the ceiling.
Q.114 What then?
A.114 When someone was talking he shouted at them. Then my youngest duaghter entered the room and the one who was here this morning pushed her into the room and made her sit down in a chair, and then after a while he took out of the room my youngest daughter.
Q.115 What is her name?
A.115 Elfreide Dahmen. He then retu ned with her to the room and he did not appear to do something to my daughter and my daughter told me he is not so bad. Then he had a talk with my granddaughter he took her beside him and was very nice to her and offered her a bar of chocolate Then at once he jumped up and shouted something in the room and I had a feeling he said it is different now.
Q.116 Who is the he through all this?
A.116 It is the one that was this morning in here.
Q.117 Where was the accused at this time?
A.117 The accused was sitting in the corner and trying to talk to my eldest daughter who could speak a little school English and then he ordered me to go in my writing room and his pistol was out.
Q.118 Which one ordered you?
A.118 The one from this morning.
Q.119 Where was he when he did this?
A.119 It was in the same room in the big room.
Q.120 Was the accused there?
A.120 Yes, the one Kozak pulled his pistol and ordered me to go to my writing room where my radio was.
Q.121 Did you come back to the room where Russell was?
A.121 When I entered the room again the accused was watching us, then Kozak went upstairs with my daughter, I was on the floor at that time.
Q.122 How did you get to the floor?
A.122 Kozak ordered me to lay down on the floor, before that he took all my stuff and my waistcoat and jacket.
Q.123 Was Russell present when the Kozak ordered you to lay on the floor?
A.123 Yes
Q.124 Did anyone else come into the room at that time?
A.124 Herr Bornheim entered the room and had to do the same thing
Q.125 Were any goods taken away from anyone that you saw?
A.125 I did notsee that I only heard Herr Bornheim ask for them to give back his wife's jewels.
Q.126 Did you see anything taken from anyone else?
A.126 My watch which I gave him, my pocket knife and my hunting dagger and my keys.

Q.127 Who got these?
A.127 Kozak.
Q.128 Were these taken from you in the room where Russell was?
A.128 Yes
Q.129 Was anything taken from anyone else there?
A.129 I cannot tell you that.
Q.130 What happened after that, you are lying on the floor, Kozak has gone upstairs with your duaghter?
A.130 After that Herr Bornheim had to lay down beside me the accused watched us and as soon as someone moved he was shouting and had his pistol in his hand. Herr Bornheim succeeded in getting away when the accused did not watch him. He was getting behind Herr Bornheim and after came back and was sitting on a chair, and then he ordered my wife and the woman of the neighborhood and my daughter to lay down beside me. He watched us always with his pistol out, and after a while he stood up and went to the door, and I heard he went upstairs. After a moment he came back. After a moment he stand up again and went out of the room and went upstairs, I heard him climb the second part of the stairs.
Q.131 Then what did you do?
A.131 After that I jumped up, opened the window and jumped out and went away, I wanted to go to my son in law who speaks very good English and we want to go to a unit somewhere.

Cross examined by the Defence

Q.132 These drinks that were offered and that you had to drink, were they the first ones out of the bottle?
A.132 Yes
Q.133 At the time the accused Russell came to your house, when you came in did he seem drunk?
A.133 No he was not.
Q.134 At any time during his stay there would you say he appeared drunk?
A.134 I could not notice it, both knew what they were doing.
Q.135 From their actions did it at any time appear that they had been drinking previously rather than drunk?
A.135 No
Q.136 What happened to the other two soldiers you mention?
A.136 The other soldiers went out of the room, they were ordered to go out of the room, and then I heard them go upstairs and then downstairs, and I did not see them after that.
Q.137 Who seemed to be the leader of this group?
A.137 Kozak, he did the talking.
Q.138 Did Kozak give you the impression he was looking for firearms, or radios, or antyhing like that?
A.138 I put it on the paper on my door, I know that Kozak reads the paper on the door, where my radio, hunting rifle was ready to turn in.
Q.140 Did Kozak give you the impression that at any time he was looking for your ~~xxxxx~~ guns, ~~xxxxxx~~ radios, cameras, or anything like that?
A.140 No, the first time, no.
Q.141 Do you remember telling your daughter to acede to the wishes of one of the soldiers when he told her to sit down when she entered the house?
A.141 No, not at all.

~~Xxxxxxxxxxx~~ In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Fourth Witness for the Prosecution

Hermann Bornheim, Paul Strasse, 4 Meppen, Germany, having been duly sworn is examined by the Prosecution

Q.142 Your name is Hermann Bornheim and you reside at Paul Strasse 4 in Meppen, Germany, is that correct?
A.142 Yes
Q.143 I understand you are a retired major in the police force?
A.143 Yes
Q.144 On the 10th of April this year did you go to the house of your neighbor at Paul Strasse 6?
A.144 Yes
Q.145 About what time?
A.145 It was about 4 o'clock or 4:30.
Q.146 Who did you find there?
A.146 Both soldiers who are accused today and the family of Stahlschmidt.
Q.147 How many soldiers were there?
A.147 Two soldiers.
Q.148 Do you see any of them in this court?
A.148 Yes (Identifies the accused)
Q.149 What members of the family were there?
A.149 Herr Stahlschmidt, Frau Stahlschmidt, two daughters, the grandchild and a woman whom I do not know.
Q.150 What happened?
A.150 After Herr Stahlschmidt was order to lay down on the floor and I was robbed, the other soldier went out of thedoor with the daughter of Herr Stahlschmidt and ordered the other soldier to watch us. I was laying on the floor and I asked the soldier a couple of times if I could go away.
Q.151 Which soldier?
A.151 The other soldier was upstairs andthis one was alone (points to accused)
Q.152 How did you come to be on the floor?
A.152 The other soldier who was upstairs ordered me to lay down.
Q.153 Go on from there?
A.153 I was thinking about fleeing somewhere and I saw that one door to the other room was open and jumped up and ran through the door and went away through the gerden on the street. When I was fleeing I heard someone calling on me, but if he came behind me I do not know.
Q.154 You do not know who it was?
A.154 It must be that soldier he was the only one in that house I do not know what he was telling me for I do not understand.
Q.155 Did the accused have any weapon when he was shouting at you?
A.155 Yes he had his pistol out.

Cross examined by the Defence

Q.156 During this little episode on the 10th was there anything to lead you to believe that the accused had been drinking?
A.156 He had been drinking something but he was not drunk
Q.157 Did he act as though he were under the influence of liquor?
A.157 I could not tell you for he was sitting on the chair.

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Fifth Witness for the Prosecution

Lieut L.B. Walker, 221 Det Mil Gov 4 Cdn Armd Div having been duly sworn is examined by the Prosecution

Q.158 Your rank, full name and unit please?
A.158 Lieut Leonard Bryan Walker, 221 Det Mil Gov.
Q.159 On the 10th of April this year were you in the town of Meppen, Germany?
A.159 Yes sir.
Q.160 As the result of a complaint made to you did you go anywhere?
A.160 I went to No 6 Paul Strasse in company with Lieut Boxseau
Q.161 What did you find there?
A.161 I entered the house and could find no one downstairs, and went upstairs andlooked into a bedroom and there I saw L/Cpl Russell.
Q.162 Was that the accused?
A.162 Yes, he was lying face down on the bed. I pushed the door open and entered the room, he was then commencing to climb off Frau Dahmen, who was lying face upward underneath him. He was clad only in his vest and underpants, she was clad in a vest and stockings. I notice that his penis was exposed, partly erect and was steaming. He stood at the side of the bed and looked at me. The girl looked at me and spoke in German, but I did not understand her, but from her actions I felt that she was appealing for help. I told the Cpl to dress. His clothes were lying on the floor and he was almost dressed when I noticed weapons on the floor under his clothes. I took possession of the weapons which consisted of one German P.38 revolver, which was loaded with one in the breach, one colt type revolver fully loaded with the exception that one cartridge was only a blank shell, and theblank shell was at 12 o'clock, andthere was a .22 rifle which had one round in the breach and two in the mag. The two revolvers were in holsters and had web belts attached. Having taken possession of the weapons I heard Frau Dahmen crying and on looking around I saw that she had commenced to dress, her clothes being scattered on the bed. Her husband then came into the room, made himself known to me and I requested him to ask his wife exactly what had happened because she only spoke German and he spoke English. He spoke to his wife then turned to me and said
Q.163 Did he say this in the presence of the accused?
A.163 Yes
Defence:- I don't think this is admissable because he asked the question in German whichthe accused does not understand
J.A. :- What the husband said was in English and well understood by the accused.
Q.164 Continue?
A.164 My wife says she has been raped by this soldier and by one other.
Q.165 Was the accused standing there at the time?
A.165 He was there.
Q.166 What did he say?
A.166 He was dressing but he said nothing. I took the accused to one side after he had finished dressing and left the woman to her husband who was crying and told the accused of the complaint received, that this woman said he had raped her. I cautioned him, I said, You are not obliged to say anything in answer to the complaint but anything you do say I sahll take down in writing and it may be used in evidence. I then said do you wish to say anything to explain your presence here. He made no reply. The husband then said to me, my wife states that the soldier has stolen her watch from her wrist. I turned to him and

said have you taken the watch. He said no. I told him to empty his pockets and from the first pocket on the left breat he produced a gold wrist watch and bracelet, which the wife identified as hers.

Q.167 Then what happened to the watch?

A.167 I retained it until after the orderly room and was instructed then to hand it back. I then took the accused into custody and while talking to the husband I saw the accused running downstairs. I gave chase and he ran into the road and I lost sight of him for a while. At that time I was still carrying the rifle and pistols, and I saw fresh footprints through a fresh dug flower bed, and I threw the weapons under a bush and followed across several gardens and saw the accused running across a field. I overtook him and stopped him about 400 yds away from the house. I was walking him back towards the detachment office and an officer with a jeep overtook us going towards the office and I requested his assistance, put the accused in the jeep and going towards the office I saw Lt Boxseau proceeding towards the office with Kozak and took them into the jeep and proceeded to the office. I then communicated with the 2 i/c of the accused's regt, Major MacKenzie.

Q.168 What did you do after that?

A.168 I returned to the house and found in the sitting room a fresh hole in the ceiling and particles of plaster on the back of the settee. On the table were five or six glasses, and four bottles, one contained liquor similar to conyac, one red wine, and another bottle containing conyac, and one of vermouth all partly consumed.

Q.169 What was the condition of the house?

A.169 It was in good condition except the contents of the drawers were strewn around the rooms.

Cross examined by the Defence

Q.170 What was the condition of the accused with reference to alcohol?

A.170 He definitely had had something to drink but he was far from drunk.

Questioned by the court

Q.171 When you ordered the accused to turn out his pockets and he turned out this watch did he say anything?

A.171 He did not say anything.

Q.172 Did he say anything after?

A.172 He found one or two papers then handed me the watch.

Q.173 Did he not say one word from the time you entered this room?

A.173 Not one word.

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Sixth Witness for the Prosecution

Lieut G.T.J. Boxseau, Netherlands Army att 4 Cdn Armd Divmhaving been duly sworn is examined by the Prosecution

Q.174 You are Lieut G.T.J. Boxseau, Netherlands Army attached to 4 Cdn Armd Div?

A.174 Yes

Q.175 On the 10th of April this year did you go in company with Lieut Walker to Paul Strasse 6 in the town of Meppen?

A.175 Yes

Q.176 What did you find there?
A.176 We found nothing downstairs and went upstairs and I found a soldier in a bedroom.
Q.177 Was it the accused?
A.177 No
Q.178 What happened next?
A.178 He went downstairs and I brought him back, and then in another bedroom I saw the accused and Lieut Walker and a woman who later proved to be Frau Dahmen, she was dressed in underwear and vest and the soldier was getting dressed. The girl was crying and seemed very excited. Lieut Walker told the soldier to dress himself and the girl asked about a gold wrist watch and I heard Lieut Walker ask the soldier and the soldier took it out of his pocket and gave it to Lieut Walker. Then the husband came,in, I did not understand all that was said but I understood the girl was sayingabout being raped.
Q.179 What language was she speaking?
A.179 German.
Q.180 Defence:- That would be inadmissable.
Prosecution:- It would be evidence of early complaint
A.180 She did not say it exactly.
Q.181 What were the words she used?
A.181 She did not say he raped me she said, He was it who took me
Q.182 What happaad after that?
A.182 When the soldier was dressed Lieut Walker ordered him to go downstairs and in a few minutes I missed him and saw them running downstairs. Mr. Walker and I ran after them he went after the accused, and later I met them on the street and he had the accused and then we went to the office of the soldier's unit

Cross examined by the defence

Q.183 Did the accused seem to be under the influence of liquor?
A.183 I cannot say that I was not close enough to him.

In the opinion of the court and the judge advocate it is not necessary to comply with theprovisions of R.P. 83(b)

THE WITNESS WITHDRAWS

THE PROSECUTION IS CLOSED

Closing address of the Prosecution

If it please the court the first charge is rape. I don't intend to deal with any of the evidence at great ~~xxxxxxx~~ length, the judge advocate will advise you as to the law. You have seen the complainant and you have heard her story. She alleges that she was raped, that there was penetration. There is evidence of fresh complaint, and there is ccoboration of the strongest character and it is surpluous to say anything further.

That eliminates at the same time the second charge.

With regard to the third charge I submit that it is a fact of which the court can take knowledge of under RP '44 in respect to fraternization. It has been proven that the accused was in the house of a German civilian and he was conversing with members of the family. It is true that at time he was menacing this family, but at other times he was drinking and conversing with civilians. It is my contention that is fraternization.

With regard to the fourth charge of robbery with aggravation, is robbery under circumstances, I think the JA will say that the threat of firearms if robbery with aggravation. As I recall it the accused did not have a pistol in his hand when he took the watch, however he was carrying a pistol and there were two armed soldiers in the room, the arms had been freely displayed and pointed at various people, and I submit that robbery under these circumstances is robbery with aggravation. The robbery is proved in that there is the evidence of the complainant and evidence that the accused had the watch, it was taken from him by Lieut Walker. It is my submission that the first, third and fourth charges have been proven.

Closing address of the Defence

With reference to all the charges, I must point out to the court that the witnesses in the most are German people, members of the Reich, and their evidence no doubt will be somewhat biased against any allied soldier. This must be given consideration when considering this case.

With reference to the first charge the defence is taking no issue that there was the actual act. Of course the only thing to bring in the question, is the question of consent and what actually means consent, in thecase at bar. There was another soldier previously who was up on the same charge before the same court and the facts in his case may beconsidered, that the girl when she went upstairs with him was under a certain amount of duress, and she allowed this chap Kozak to have intercourse under the circumstances. However, inthe case of the accused the circumstances are somewhat different and it is a question of fact whether or not there was consent. The circumstances are that the accused goes into the room and there is his comrade who is having intercourse and the sight in itself plus the fact he had been drinking, excitedhim and naturally he wishes to fall in line and starts to undress and at the first chance gets into bed with the girl. She makes no overt act to stop him. The only evidence as to her condition of mind was that she was still frightened of the pistol which the accused might have and I bring to the attention of the court it is part of the dress of a soldier to be armed. He had brought it out on one occasion but that was to stop any movement in another room.. At this time then, I wish to submit to the court that the girl by her actions in this case did not make any move of not consenting to the act. I think she was really past the stage of thinking whether or not in this case the accused would shoot her or her father and the fact that she did not cry or scream amounts to a form of consent. Consent in a case of this type would not be one that has to show openly that she is willing and that is the case at bar.

As to fraternization, the accused took little or no part in the affair, he sat in the corner on a chair. The only time he had anything to do with it was when the men were lying on the floor and he was standing and when they moved then his pistol came into evidence. I submit that is far from any definition of fraternization. The evidence shows they were looking for firearms or wireless, and it would be reasonable for the court to assume that the accused felt they were doing a military duty rather than being friendly with civilians.

The fourth and last charge is one where robbery took place, robbery with aggravation, is the charge itself, and it is my submission here that the evidence shows the girl gave him the watch when he pointed to it. There was no action on his part to take the watch, he pointed to it and she handed it to him. The evidence shows that when the girl entered the room and was told to sit down she obeyed when told to by her father. Isubmit that this is a girl who always obeyed her father and she felt that whatever happened after that she was to accede to it, and when the accused pointed to her watch, she saw he wanted it and gave it to him. I feel that does not come within the meaning of robery with aggravation, and such is my submission to the court.

Summing up by the Judge Advocate in the case of
B 45809 Pte (L/Cpl) Russell, L.W. - A & S H of C

Sir, the court must now determine what facts have been proven. The evidence given is not excessive in quantity and the issues are quite clear cut. The most confusing element in this case is the fact that the court has only today completed the hearing of another case very similar in the evidence and in the charges. I therefore must emphasize the necessity of the court eliminating from their minds all evidence given in that case and likewise the addresses by the Prosecuting and Defending Officers and the summing up by myself.

Because of that last fact I must now sum up in this case as if no other case had been heard. On those questions of fact the court is of course the absolute and only judge. On questions of law I must advise the court and the court should follow the advice of the Judge Advocate.

The first charge is a charge of rape, that in Germany on the 10th of April the accused had carnal knowledge of Frau Elfriede Dahmen without her consent. Carnal knowledge is complete upon penetration to any extent. The definition of rape is the act of a man having carnal knowledge of a woman who is not his wife without her consent, or even with her consent, when such consent has been exhorted by fear of death or bodily harm. The fact that a woman has consented to submit to an act of sexual intercourse is definitely a factor to be considered whether or not the voluntary consent has been given, but submission in itself does not necessarily prove voluntary consent. There hasbeen conflicting evidence with regard to an early complaint made by the girl in this case. It will be for the court to determine whether or not the complaint was made at the earliest reasonable opportunity and if so what was the complaint of. If the court finds that there was in fact a complaint made by Frau Dahmen that this accused had raped her they can consider that fact in deciding whetheror not such a a complaint is consistent with the evidence which he tells and they may consider that complaint as evidence tending to disprove consent. Such a complaint is not independant substantive of evidence of the facts contained in the complaint nor is it cooborative of the complainant's evidence. It is my duty to warn the court of a fact which in any event is self evident, namely, that it is most dangerous to convict an accused person of an offence of this nature upon the evidence of the complainant, unless it is cooborated in some material way by indepenlant evidence. Such evidence may be direct evidence or it may be circumstantial evidence. In the latter case however, it would not beconsidered cooborative if it were not consistent with one or more points of view. The cooboration must be evidence not coming from the complainant herself, and should cooborate not only the identity of the accused as the person implicated but also the fact that a crime has been committed. In this case the evidence of Lieut Walker is evidence which cooborates the identity of the accused and the fact tha t an act of sexual intercourse took place. The weight to be given that evidence is a matter for the court. There remains the question of consent. The complainant has testified that she submitted to the act because of fear of being shot. It is quite proper for the court to consider not only the evidence they have here as to the accused's actions preceding the offence and subsequent to the offence and as to the conduct of the complainant herself immediately before and after, but it is also proper for the court to take Judicial notice of the fact that we are at war, the stage that war has reached and the relations existing between the German people and ourselves. A thorough consideration of all these factors must assist the court in deciding whether or not it is reasonable to aspept the complainant's evidence, that

fear was engineered into her mind by the actions of the accused in the particular place and at the particular time that he did those acts. Much evidence has been produced relating only to the question of consent and relevant only to the state of mind of the complainant. I particularly wish to point out that if the soldier Kozak is guilty of rape then this accused cannot be held in any way responsible for the act of Kozak inthis trial, even though it has been admitted in evidence, its purpose is only on the question of the state of mind that the complainant had on this night. Similarly evidence of any offence or acts committed by Kozak downstairs before the offence took place are admitted in evidence not for the purpose of fixing responsibility for those acts on the accused, but in order to show what the state of mind of Frau Dahmen was and whether or not her explanation of her conduct is reasonable. Lt Walker has given evidence that he told the accused that the complainant had alleged that he had raped her and that the accused did not reply.

(The J.A. reads from page 84 MML)

If the court feels that on this occasion the circumstances were such that they called for a reply then it is open to them to find that because of Russell's silence he was to some extent admitting the truth of the allegation. I wish to point out however, that one of the circumstances which they must consider in determining whether or not a reply was called for, was that on the second occasion when Mr Walker repeated the accusation, he also advised the accused that he need not say anything.

With respect to the second and third charges, it will be necessary for the court to comprehend the scope of the policy of non-fraternization. If they find that the extent of that policy is a notorious fact, they do have power under the rules of procedure to take judicial notice of that policy. It is obvious that the standards of behaviour which we expect from a soldier vary from age to age and from time to time and the court must consider whether the act of the accused complained of in the second and third charges, under their own peculiar circumstances, is such that it is culpably improper. I want particularly to point out that the wording of the third charge is such that the court has to decide on that charge, whether the actions of the accused in the living room downstairs were culpably improper. They are deciding whether his actions in drinking and conversing with the civilians was in fact fraternization, that no matter how reprehensible his actions were, he could not be found guilty of the third charge as it is worded. However, in deciding whether or not he was fraternising I again emphasize that thecourt must consider the evidence heard in this case and not be influenced by any other evidence.

With respect to the last charge:-

(J.A. reads from Archbolds' page 597.

It is not necessary that thegood be removed by forcible or physical act of the accused. It is sufficient to prove the crime of robbery if the evidence is such as to satisfy the court that the complainant was in such an apprehension of danger as to induce her to part with her property and that she delivered them up through fear and apprehension caused by the accused. In this case the charge is robbery with aggravation. That differs from simple robbery in that it is necessary to prove that the person at the time of the robbery was armed or had an offensive weapon. Provided the elements in the definition of robbery are present, it is only necessary to prove that he used that weapon in a threatening manner.

It only remains to advise the court that the accused is innocent until he is proven guilty and the onus of proof remains on the Prosecution throughout, not only to prove the guilty of the accused but to prove his guilt beyond all reasonable doubt. A reasonable doubt is not a remote possibility that a cowardly court might clutch at for acquittal. It is a doubt of some substance. This term which is incapable of a

precise definition but it is one that can be comprehended without difficulty. If there reamins in the minds of the court a doubt as to the accused's guilty then he must be given the benefit of that doubt.

Is there anything further you wish me to say Mr. President?

No.

And you Capt Wasson

No, that covers it.

And you Capt Lewis

No

First Witness for the Defence

Capt W.H. Mills, Argyle and Sutherland Highlanders of Canada, having been duly sworn is examined by the defence

Q.1 Do you know the accused in this case?
A.1 I do.
Q.2 How long have you known him or of him?
A.2 Since July 1940.
Q.3 How long has he been with your Regt?
A.3 Since July 1940
Q.4 What is his general character in the Bn?
A.4 Very good
Q.5 Do you know anything about his ability?
A.5 I am interested in him as Coy Comd and I usually make inquiries about the progress and I have been informed on different occasion that he is very willing and cooperative.
Q.6 Is he the type of man you would be willing to have with the Regt?
A.6 Yes.
Q.7 Would you like to have him back?
A.7 Yes
Q.8 Do you know anything about his honesty?
A.8 I have no reason to doubt his honesty.

The Prosecution declines to cross examine

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions or R.P. 83(3)

THE WITNESS WITHDRAWS

Plea in Mitigation

The case has been before the court and the circumstances surrounding it for the better part of the day. However, there are a few points which I think should be taken into consideration by the court in considering sentence..

Facts about the person of the accused are, he is 23 years, 11mos old and joined his present unit in July 40 and has been with them since that time. He is a L/Cpl and must have had some ability. The character witness has pointed out to the court that he has been a very good type of soldier and the type that is wanted in the Regt. and I think that should be taken into consideration. He was with the unit in Jamaica and in England and up to the time of the attack at Meppen. He has been well forward on many occasions and has done everyting that a soldier could do and has been a very good soldier. His parents are living in Canada and there has been some family trouble which may have to some degree influenced him. The fact thathis mother and father have separated, his father is a retired medical practitioner. Quite recently his mother has left his father and he has felt quite badly about the situation and wants to get home and see the family again. As the evidence pointed out this Kozak was the real leader the accusedmerely followed him, he is the type of person easily led and finds himself in this unfortunate position. However, I think the court would be in keeping with the general practice if they were to give the accused greater lenfiency in respect to sentence than the person he followed. Consideration must also be given to the fact that the accused had been drinking and was

not used to the wines and spirits of thecontinent. As pointed out in respect to the robbery there was no overt act, there was no threatening manner, he merely pointed to the watch and the girl gave it to him. I think that with all the circumstances of this case the court should deal with this accused as lenient as they possibly can do.

SUMMARY OF EVIDENCE

Russell
Frau Elfreide Dahmen

Summary of Evidence in the case of B45809 L Cpl Russell, Lawrence William, HQ Company, 1st Bn The Argyll and Sutherland Highlanders of Canada, Cdn Army Overseas, charged with (i) COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, RAPE (Sec 41 AA) and (ii) CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE, IN THAT HE, DID FRATERNIZE WITH GERMAN CIVILIANS (Sec 40 AA).

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

As the first four witnesses are German civilians their sworn statements were recorded and translated into English by 102707 Sgt van Bruggen Leendert, Royal Nederlands Army (Interpreter, attached to A & S H of C, CAO). The accused consented to have Sgt van Bruggen Leendert act as interpreter.

FIRST WITNESS

Frau Elfreide DAHMEN residing at Marst Wessel Strasse, Meppen, Germany, Sworn, states:-

I am Frau Elfreide Dahmen and live with my husband at Marst Wessel Strasse, Meppen, Germany. About 1530 hours 10 Apr 45 I went to visit my parents who reside at Paul Strasse 6 and when I arrived there and entered the house I was stopped by a Canadian soldier whom I recognize in this room (Witness points out Pte Kozak, A L). This was in the hall and no one else was in the hall at that time. He did not speak to me in German and I only understand a little English but did not know what he was saying but understood by his gestures he wanted me to enter a room which led off the hall. I went into the room and he followed me in. In the room were my parents, my sister and a woman whom I know. They were all sitting around the table, except the woman who was sitting in a corner. Also in the room was another Canadian soldier whom I recognize in this room (witness points out L Cpl Russell, L W). The Canadian soldier who followed me in (Pte Kozak) told me to sit down on a chair. I did not want to do it but my father said to do so. I did not know I was not allowed to talk and when I talked a little I understood by his words I was to keep quiet. The soldier who followed me in (witness points to Pte Kozak) was walking up and down the room with his pistol and later a hunting rifle belonging to my father. He was talking but I did not understand what he was saying. He had a threatening attitude. Some other person was talking in the room and I am not sure who it was and the other Canadian soldier (witness points to L Cpl Russell) took his pistol in a fighting attitude. I was very nervous and understood from the other Canadian soldier (witness points to Pte Kozak) that I was to leave the room, which I did and he followed me and we went into the hall. Before we went out, the other Canadian soldier saw my wrist watch and took it off. The first soldier (Pte Kozak) took off my fur coat, which I was wearing and in which I had some keys. He put the keys in his pocket. Leading off the corridor was another room. I was talking to him in the corridor and he said he was a doctor and talked some more which I did not understand. His firearm was not in his hand but on his belt. I understood that he wanted a drink of gin or schnapps because also when

Theft.
Russell
From Watch.
NOT CHARGED

Russell
Fran Elfreide Dahm

DRINK

FRAU MADE TO DRINK.

DRINKING

I entered the first room there were 4 bottles of gin on the table and 2 were partly full. The two Canadian soldiers had been drinking from three bottles so I asked him to take me back to the other room as I was scared about my parents. We came back to the other room where the other people were and I was ordered to sit down and to have a drink. I just took a little bit and was ordered to empty my glass by his words. In that room where my parents were, I saw both the Canadian soldiers (witness points to both accused) drinking themselves. I did not see my parents, my sister or the other women drinking, but in front of my father on the table was an empty glass. The glass fell on the floor and broke so the Canadian soldier (witness points to Pte Kozak) said to my mother to drink in a new glass which my mother did. One of the Canadian soldiers (witness points to Pte Kozak) was shouting and he had a box of ammunition which was for my fathers hunting rifle and he ordered my father to take it away to another room. My father did not understand and the soldier pushed a rifle in his back. I told my father what he wanted and my father took it away. The Canadian soldier (witness points to Pte Kozak) went out of the room. I heard a shot and was afraid my father had been hurt until he came back into the room. The same soldier placed up a radio and threw it on a sofa and pushed my father on the sofa as well. He pushed my father, took his coat off and ordered my father to lie down on the floor. Another German civilian entered the room and the same Canadian soldier (witness points to Pte Kozak) put him down on a chair and took his wallet. He ordered this man to lie on his stomach beside my father on the floor and if any person in the room spoke the other Canadian soldier (witness points to L Cpl Russell) showed his pistol. The soldier (L Cpl Russell is pointed out by witness) told me to go upstairs and after that the other Canadian soldier (witness points to Pte Kozak) said he wanted to go up first. I went out of the room and started towards the door entrance to the house and he pushed me towards the stairs. I went up to my former room and sat down on the chair. He wanted me to go to a sleeping room as the room I was in was a sitting room. I did not know what he expected from me but I wanted to sit near a window where people could see me. He pointed out to the bed and I knew what he wanted from me. We stayed in the same room, he gave me a bar of chocolate but I did not eat it. He ordered me to lie down on the bed but I did not want to and I sat down on it. He ordered me to take off all my clothes and he still had a pistol in his hand. I took off my clothes my self and was lying down on the bed. He did not remove any of his clothes. We had sexual intercourse with me. While we were in the room, the other Canadian soldier came into the room (witness points to L Cpl Russell) and I understood the Canadian soldier (witness points to Pte Kozak) to say another two minutes and the other soldier away and then shortly came back and took off all his clothes. The first soldier went away himself. I did not have a chance to leave the bed or dress.

CLOTHES OFF

RAPE ACT

I had all my clothes off. The other Canadian soldier (witness points to L Cpl Russell) got onto the bed with me. He had sexual intercourse with me. I hated the second soldier was drunk and I pushed him away and got dressed. I was nearly dressed when the other soldier returned and wanted to have sexual intercourse again. He ordered me to

Russell
Father

undress myself. I did not do it and then an officer came into the room. The second soldier with me was not fully dressed but the first one was. The officer said something to the two soldiers of which I did not understand and he told me to leave the room which I did and met my husband who had come upstairs.

WITNESS
LT. WALKER
?

The accused declines to cross-examine this witness.

Frau Elfreide Dahmen.

SECOND WITNESS

Paul Stahlschmidt of Paul Strasse 6 Meppen, Germany, sworn, states:-

I am Paul Stahlschmidt residing at Paul Strasse 6 Meppen, Germany and am the father of Frau Elfreide Dahmen who resides at Horst Wessel Strasse Meppen, about 1500 hrs 10 Apr 45, four Canadian soldiers appeared at my home. When I entered the room the soldiers had two bottles of "Schnaps" with them and asked for four glasses which I gave them. One of the soldiers with a black moustache (witness points to Pte Kozak) told me several times that he was a Russian. They drank much "Schnaps" and asked for more which I gave them. I was ordered to drink as well as my daughter and my wife which we all did. They told My wife and me to drink a glass with them out of each bottle which we did. We were now allowed to speak and he pointed his pistol several times at me. He gave my niece two bars of chocolate. Then he jumped up and suddenly asked for the ammunition for the small calibre rifle which I had prepared for handing in at the town hall which I gave him. He loaded the rifle and fired a shot into the ceiling. My daughter Frau Elfreide Dahmen then came in. Then he ordered me to go up and asked me at pistol point to come with him to another room which I did. To satisfy him I gave him my watch which he took. My portable wireless set he put on the writing desk and ordered me to open it. When the switch of the set did not work, he got more and more excited and as I opened the back of the set, he fired into the set. (this Canadian soldier is pointed out as Pte Kozak) Then he took me back into the room and ordered me to undress. He took off me a bunch of keys, a fountain pen and he emptied the contents of my purse on the table and pushed me back. During this, Mr Bornhein - a neighbour - entered the room. Suddenly the same soldier ordered me to lie down facing the floor. Out of my desk, he took my hunting dagger, opened everything and threw my contents on the floor. Then he went away with my youngest daughter - Frau Elfreide Dahmen - by grabbing her arm and taking her out of the room. We were watched by the other soldier (witness points to L Cpl Russell). The other two soldiers who accompanied the two accused, had several drinks and were ordered by the two, who remained (witness points to the two accused) to leave the room which they did. In the meantime he who remained ordered my wife, my oldest daughter, a woman of the neighbourhood and Mr Bornheim to lie down on the floor as well. Mr Bornheim soon jumped up and ran away. The soldier who was watching us, ran with his pistol after him but did not get him. After a short time, this soldier got up and went upstairs as well, came back down and went upstairs again. I took this opportunity to run away. I jumped through the window and succeeded

WITH 2 BOTTLES.

DRINKING. FATHER + HIS WIFE & DAUGHTER.

FRAU ENTERED

NEIGHBOUR ENTERED

Russell
Neighbour
Husband

in escaping. I wanted to fetch my son-in-law to help us. My eldest daughter who also escaped went and brought my son-in-law. I have not as yet received back my fountain pen, pocket watch nor hunting dagger.

The accused declines to cross examine this witness.

Paul Stahlschmidt.

THIRD WITNESS

Neighbour

Hermann Bornheim, residing at Paul Strausse 4 Meppin, Germany, sworn, states:-

I am Hermann Bornheim residing at Paul Strausse 4 Meppin, Germany and am a neighbour of Paul Stahlschmidt Paul Strausse 6 and am acquainted with his daughter Frau Elfriede Dalmen. On 10 Apr 45, I went to Paul Stahlschmidt's house about 1600 hrs. In his room were two soldiers of the Allied army sitting and Stahlschmidt's family and one other woman. Standing at the door, a soldier approached me and dragged me into the room (witness points to Pte Kozak) He was dealing with Mr Stahlschmidt and then came to me. He searched me and took a brilliant diamond - collier, two diamond rings, one gold gentleman's watch chain, one magnifying glass, one pocket knife and one pencil. During the search, I was beaten several times. I had to take off my jacket and vest and had to lie down on the floor where Mr Stahlsch-midt was lying. Everything was done under threatening with a pistol. When I was lying on the floor, a soldier (witness points out Pte Kozak) went upstairs with Frau Dalmen, and he made the other soldier watch me. After a short time, I jumped up and fled. I recognise the two soldiers here to-day as the same men who were present at Mr Stahlschmidt's house on that day. I had nothing to drink in the house but saw there two soldiers drinking Schnapps and Gin. I have not recovered any of the articles above mentioned taken from me.

The accused declines to cross examine the witness.

Hermann Bornheim. Neighbour

FOURTH WITNESS

Georg Dalmen, residing at Horst Wessel Strasse 70, Meppin, Germany, sworn, states:-

I am Georg Dalmen, residing at Horst Wessel Strasse 70, Meppin, Germany and am the husband of Frau Elfriede Dalmen, who is the daughter of Paul Stahlschmidt, Paul Strausse 6 Meppen. About 1530 hrs 10 Apr 45, my sister in law Miss L. Grundke came to my house and told me to come to Paul Strausse 6 . When I arrived there I met Mr Bornheim at the front door who told me wife was upstairs. I went upstairs and saw my wife and LT Walker and one soldier (witness points to L Cpl Russell). They were in the former bedroom of my wife. When I first saw my wife, she was fully dressed except for shoes. She was crying and I went to her. When I saw the soldier (witness points to L Cpl Russell) straightening his trousers. I asked what happened later that night and she said two soldiers had had sexual intercourse with her and told me all that took

Russell
Lt. Walker

place. I saw the other Canadian soldier (witness points to Pte Kozak) there that day when he handed the hunting rifle to Lt Walker. This was upstairs. I could see that this soldier (Pte Kozak) was drunk. I saw the other but he did not appear to be drunk.

Russell

The accused declines to cross examine the witness.

Georg Dahmen. Husband.

FIFTH WITNESS

Lieut Leonard Bryan Walker 221 Mil Gov't Dept., 4 Cdn Armd Div, sworn, states:-

I am Lieut Leonard Bryan Walker 221 Mil Gov't Dept., 4th Cdn Armd Div. About 1700 hrs 10 Apr 45, information was received by me at my office that two Canadian soldiers were in Paul Strausse 6. In company with Lieut Boxseu we proceeded to that address. We entered by the rear door and could find no one on the ground floor. I went upstairs and through a bedroom door partly opened, I could see a soldier whom I know recognize as L cpl Russell on the bed face down. At that time I heard a noise further along the passage and sent Lieut Boxseau to investigate. I then opened the door of the room and entered and then saw L cpl Russell who was clad in his vest and under pants climbing off a woman whom I subsequently learned to be Frau Dahmen. His penus was partly erect and steaming. She was clad in a vest and stockings. She was terrified and appealed to me in German which I did not understand, but from her actions, I knew it was for help. I told L cpl Russell to dress and the girl commenced to put her clothes on. L cpl Russell's clothes were lying on the floor and underneath them, I found a pellet 22 rifle which was loaded including the breach. I also found two revol-vers - one F.38 automatic with one round in the breach and a .38 also loaded. I took possession of them. L cpl Russell was under the influence of drink, but not drunk. At this stage, Mr Dahmen the husband, rushed up the stairs and he spoke English. Lieut Boxseu had come back along the passage with another Canadian soldier whom I recognize as Pte Kozak. I asked the husband to speak to his wife who was in a state of collapse and crying bitterly exactly what had happened. I was then informed by him that his wife had been raped by L cpl Russell and prior to that by another soldier. She then pointed out Pte Kozak who was standing in the doorway to her husband and he told me she identified Kozak as the soldier who had raped her first. Lieut Boxseu entered the room and I took both soldiers on one side away from the husband and wife who were crying to-gether, and cautioned them and told them of the Frau's complaint and asked them if they wished to give any explaination for their presence in the house. They made no reply. The husband then informed me that L cpl Russell had taken his wife's gold watch from her wrist. I asked L cpl Russell if this was true and he said "No". I asked him to empty his pockets and the first pocket emptied - left breast pocket - he produced the watch which the woman identified as her property.

Russell
Lt Walker
Lt Boxem

I took both soldiers into custody, and whilst talking to the husband, telling I would return later and examine the house. I saw both soldiers running down the stairs. I called to Lieut. Boxem, and we both ran down the stairs after them. On leaving the house, I ran into the street and turned left following that through the flower beds and across fields, and later caught L o/l Russell about four hundred yards away. I was taking him to the detention office, when I got a lift in a Jeep and whilst proceeding I saw Lieut. Boxem walking in the same direction with Pte. Rozak. On arrival at the office, I communicated with the soldiers unit - A & S H or C - the 2 i/c and he ordered them to be placed under close arrest. I then returned to the house and saw a hole in the ceiling with freshly fallen plaster on the settee. On the table were five glasses and four bottles; one wine; one with no label, but appeared to be cognac; one cognac and one vermouth, all of which had been partly consumed. Most of the rooms in the house gave evidence of [illegible] and articles strewn about the room. The gold watch has been returned, and a rifle, a camera, which have been retained by military government.

The accused declines to cross examine the witness.

Leonard B Walker

SIXTH WITNESS

Lieut. Godfried Willem Joseph Boxem, Netherlands Army, attached to 4 Cdn Armd Div, sworn, states:-

I am Lieut. Godfried Willem Joseph Boxem, Netherlands Army, attached to 4 Cdn Armd Div. About 1700 hours 10 April 45, Lieut. Walker and myself were informed that there were some soldiers at Paul Strasse 6. We proceeded there and when we entered we did not see any soldiers. Lieut. Walker went upstairs and I followed him. I entered a bedroom and saw one Canadian soldier whom I recognized as Pte Rozak, here today. He was dressed but was straightening which was in disorder. I asked him what he was doing, and he gave no reply. I told him to go down stairs and wait there until Lieut. Walker came down. He tried to go out of the house, so I ordered him again to follow me upstairs. We went up and entered another bedroom in which were Lieut. Walker, the other Canadian soldier whom I recognized as L Cpl Russell, and a German woman whom I subsequently learned was Frau Behmen. L Cpl Russell was dressed in his underwear and Frau Behmen had some underwear only on, but no underpants. She was crying and quite distressed. She spoke to me in German and asked me if she could get dressed. Then a man came upstairs whom I later learnt was her husband, and he could speak English. He spoke to Lieut. Walker and heard him say that one of the soldiers had raped her, and the other had done the same. She identified L Cpl Russell and Pte Rozak as the two soldiers who had raped her. I saw Lieut. Walker pick up a rifle and two pistols and the woman said she missed her wrist watch. Lieut. Walker asked for it and got it from L Cpl Russell. We ordered the soldiers to go downstairs and they tried to escape by leaving the house and disappeared.

Russell
G. Boxseu

Lieut. Walker started after L Cpl Russell and I started after Pte Kozak and caught him several hundred yards away as he was walking along a road. Subsequently I met Lieut. Walker with L Cpl Russell and they were in a jeep and we all came back to the office. I could see Pte Kozak had been drinking and he told me he had, but he was not drunk.

The accused declines to cross examine the witness.

G T Boxseu

The accused was cautioned as follows:-

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

A. I do not wish to make a statement.

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence, consisting of seven pages, was taken down by me in the presence of the accused and that RP 4(C), (D), (E), (F) and (G) (13) have been complied with.

In the Field
13 April 45

(J R W Hider) Lieut
A & S H of C

(Officer detailed to take Summary of Evidence)

B45809 Pte(L Cpl) Lawrence William RUSSELL A & S H of C

NO FIELD CONDUCT SHEET AVAILABLE FOR THIS MAN.

N/A

N/A

No

8

No

8

No

23 years 11 Months

5 July 1940

4 years

CVSM & Clasp

Lance Corporal

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

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

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

Signed this 18th day of April

C.T. Bissell
Capt. & Adjt.

5K/152

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Order of Brig J.C. Jefferson Comd 10 CIB dated 15 Apr 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 15, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 162, 163, 5m, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B.45809	Pte. L/Cpl.	Lawrence William	RUSSELL	A & S H of C

CERTIFIED TRUE Copy

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Germany on (date(s)) 18 Apr 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do not include all relevant law RPs. For guidance on procedure when a variation in this form occurs, see forms for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for marks and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-76, 73, 74, 94, 103, 119, 132.)

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

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

A3. The Court is opened. The accused is (XXX) brought before the Court. At 1040 hours trial commences.

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

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

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

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

D4. The Prosecution is closed.(1) [redacted]
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 80(C), 114, 115.)

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

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. NO. Do you intend to call witnesses on your behalf ?
Ans. NO [redacted]
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. [redacted] (1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF RP5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

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

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the first & fourth charge(s), being subject to confirmation, will be promulgated later.(1)
Or [redacted]
(1. *AA 54(3) (6), RP 43, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. A and Ex. B respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

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

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

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its provisos, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see insets on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

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

Accused: B.45809 Pte. (L)Cpl) Lawrence William RUSSELL A & S H OF C

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA SEC 41	Not guilty	Guilty	
2nd Alternative AA Sec 40	Not guilty	Not guilty	
3rd AA sec 40	Not guilty	Not guilty	
4th AA sec 41	Not guilty	guilty	
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; specials / adings see RP 44 and MML p 733, and in lieu of 301 see RP 54 fn 6.)

[redacted] (1)

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

Time in confinement awaiting present trial—a total of 8 days, of which NIL days were spent in hospital.(1)

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

Sentence Awarded by the Court:

TO SUFFER PENAL SERVITUDE FOR THE PERICD OF FIVE YEARS AND TO BE DISCHARGED WITH IGNOMINY FROM HIS MAJESTY's SERVICE

(Sgd) W Dean Capt — Judge-Advocate, if any. 16 Apr 45 — Date awarded. (Sgd) J L Cassidy Major — President. (RP 45, 50)

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

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

I reserve confirmation of the finding and sentence for higher authority

Date 26 Apr 45 (Sgd) J C J Jeffery Brig — Commanding 10 Cdn Inf Bde

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

(For duties and powers see AA 54, 57, RP 37(D) fn 6.4b(A), 51-58, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

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

CONFIRMED

[redacted] (1)

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

(Sgd) H D G Crerar

Date 10 May 45 — Commanding (H.D.G. CRERAR) GENERAL GOC in C FIRST CDN ARMY — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (AP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B.45809 L/Cpl. Lawrence William Russell	23 May 45	A S H of C

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

MEDICAL OFFICER'S CERTIFICATE (CF(Gen) Form 567)

I certify that I have this day examined L/Cpl Lawrence William RUS.

XXXXX

and in my opinion he is FIT/UNFIT to undergo trial by Court Martial.

Station FIELD

Date 18 Apr 45

Capt
RCAMC

HQ Sqn 4 Cdn Armd Div

FIELD GENERAL COURT-MARTIAL

CFA50 (In lieu of AFAS) 40/PAM/1697 (1944)

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.45809	Pte.	L/Cpl.	Lawrence William	RUSSELL	A & S H of C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 13 Apr 45 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial",

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

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

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

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

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

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

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

PRESIDENT.

MAJOR (Rank.)	G.L. CASSIDY (Must be named. RP 106.)	Alq R (Unit.)

MEMBERS.

CAPTAIN	J.L.SUMMERS	29 Cdn Armd Recce Regt
CAPTAIN (Rank.)	J KIDD (Named or detailed. RP 106.)	Linc & Welland R (Unit.)

WAITING MEMBER.

LIEUT. (Rank.)	W.W. SOLKIN (Named or detailed, if any. RP 106.)	Alq R (Unit.)

JUDGE-ADVOCATE.

CAPT (Rank.)	D.G. DEAN (Must be named, if any. RP 106.)	2 Cdn Corps (Unit.)

On Active Service in the Fd

in GERMANY (Country.)

Date 15 Apr 45

J. K. Jefferson (Signed personally. RP 105 fn 2.)

Brig (Rank.)

Commanding 1o Cdn Inf Bde Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

CHARGE SHEET

The accused No. B.45809 (L/Cpl) Pte. Lawrence William RUSSELL, Headquarters Company, 1st Bn The Argyll & Sutherland Highlanders of Canada a soldier of the Canadian Army Overseas, is charged with:

First Charge
Sec 41
Army Act

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

in that he

in the field in Germany, on 10 Apr 45, had carnal knowledge of Frau Elfreide Dahmen, without her consent.

Second Charge
Sec 40
Army Act
(alternative)

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he,

in the field in Germany, on 10 Apr 45, did fraternize with Frau Elfreide Dahmen, a German civilian and resident of Germany, by having carnal knowledge of the said Frau Elfreide Dahmen with her consent

Third Charge
Sec 40
Army Act

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he,

in the field in Germany on the 10 Apr 45 did fraternize with German civilians at the house Paul Strasse 6 by drinking and conversing.

Fourth Charge
Sec 41
Army Act

WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, ROBBERY WITH AGGRAVATION CONTRARY TO Sec 23(1) (a) of THE LARCENY ACT 1916.

in that he,

in the field in Germany on 10 Apr 45 being armed with a pistol robbed Frau Elfreide Dahmen of one gold wrist watch.

In the field
14 April 45

R D Mackenzie Maj
(R.D. Mackenzie) Major
A/Commanding Officer
A & S H of C

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the field
15 Apr 45

J C Jefferson Brig
(J.C. JEFFERSON) Brig
Comd 10 Cdn Inf Bde

First Witness for the Prosecution

Frau Elfreide Dahmen, Harst Wessel, Meppen Germany, having been duly sworn is examined by the Prosecution

Q.1 If there is no objection I will lead the witness in some parts in view of the hour and of the previous trial?

A.1 Defence - I have no objection I will object if it goes to far.

Q.2 You are Frau Elfreide Dahmen, Harst Wessel, Meppen, Germany

A.2 Yes.

Q.3 What is your husband's name?

A.3 Georg Dahem

Q.4 You are a German civilian and an inhabitant of Germany?

A.4 Yes.

Q.5 On the 10th of April this year at about 3.30 in the afternoon you visited your parents at Paul Strase 6?

A.5 Yes

Q.6 Please tell the court who were there when you arrived and what happened?

A.6 When I entred the home I met a Canadian soldier.

Q.7 Was it the Canadian soldier here in court or someone else?

A.7 No

Q.8 What was his name, do you know?

A.8 No

Q.9 Do you know it now?

A.9 Yes, Kozak.

Q.10 No the accused?

A.10 No.

Q.11 What happened then?

A.11 Kozak brought me by the arm and brought me in the big room. Around the table were sitting my father and mother my sister and a woman of the neighbourhood. I understand from Kozak I had to sit down on a chair.

Q.12 Do you see the other Canadian soldier in court, the one in the corner on the chair?

A.12 Yes (Identifies the accused)

Q.13 Go on please.

A.13 I did not want to sit down but my father told me to sit down. I was not allowed to speak. When someone was talking both the soldiers had a fighting attitude with the pistol, this soldier pointed to my watch and I gave him the watch.

Q.14 Who was that, this accused?

A.14 Yes.

Q.15 His name is Russell, try to call him that. Why did you give him the watch?

A.15 I could not do anything and I like to give my watch before they shoot me down.

Q.16 Were you afraid of being shot down?

A.16 Yes I was afraid for the pistol had a fighting attitude.

Q.17 Who was holding the pistol?

A.17 Both of them.

Q.18 Go on please.

A.18 Kozak walked the room up and down and as soon as someone moved or was talking Kozak had a fighting attitude with the pistol.

Q.19 Just what do you mean by this fighting attitude with the pistol? I suppose this would be a threatening or menacing attitude, is that correct?

A.19 Most of the time they both had a pistol in the hand, and sometimes it was laying before them on the table.

Q.20 This fighting attitude would it be a menacing manner?

A.20 It was ferocious.

Q.21 Go on from there?

A.21 Kozak took my by the arm and said I would go with him, I went with him to the small hall.

Prosecutor This evidence that I am introducing is admissable as it bears on the question of consent. It involves the previous incident I know. Do you feel it is reasonable

Defence So far I have no objection.

Q.22 If so, I will make it known, he took you upstairs, tell the story from there?

A.22 Kozak was up in my room and the door opened and Russell came in.

Q.23 Just tell what happened please from the time you went upstairs and Russell came in?

A.23 I cannot tell other than what I said before.

Q.24 Explain to her interpreter that this is a deparate trial and it is just as if nothing had been said in the other case, and as if the other case had not been before the court.

A.24 The witnesses breaks down and the prosecutor requests that she be allowed to stand down while other witnesses are heard.

THE COURT ALLOWS THIS WITNESS TO STAND DOWN

SECOND WITNESS for the Prosecution — Georg Dahmen, Harst Wessel, Meppen, Germany having been duly sworn is examined by the Prosecutor:

Q.25 Your name is Georg Dahmen and you live at Harst Wessel in Meppen, Germany?

A.25 Yes, that is correct.

Q.26 I understand you are a manufacturer?

A.26 I am a merchant now with my father.

Q.27 On the afternoon of 10th April, this year I understand you were called by your sister in law to your father in law's home at Paul Strasse 6?

A.27 Yes.

Q.28 Will you tell the court what you saw on arrival there?

A.28 I came in and met Herr Bornheim at the front door, and asked where my wife was, he told me she was upstairs, so I went up and saw Lt Walker in the room of my wife, and her she was sitting before her bed. I asked her what had happened and she only cried, she could not tell me anything. Looking around in the room I saw this one (points to the accused)

Q.29 What was his state of dress?

A.29 He had his trousers in his hand and was putting them on and was standing on one leg.

Q.30 What was the state of dress of your wife?

A.30 She was dressed without shoes.

Q.31 Did you have any conversation with her?

A.31 No, I could not it was impossible.

CROSS EXAMINED BY THE DEFENCE

Q.32 In your mind was the accused drunk at this time?

A.32 No not this one, as I told you before.

Q.33 Prosecutor - Forget about the old trial this is a new one.

A.33 Yes, I am sorry, because he was standing on one leg and putting on his trousers.

Q.34 Did you notice if he had a gun or was armed?

A.34 I could not notice that.

QUESTIONED BY THE COURT

Q.35 You say you received no answer from your wife? When you asked her what was wrong she was not lucid at the moment?

A.35 Yes, sir.

Q.36 What actually happened?
A.36 She was crying and I asked her what happened and she said I cannot tell you, it was awful, awful.

COURT - Do you think the wife is sufficiently recovered to tell us now, or do you think it would be b tter if the husband stayed in now that his evidence has been taken.
PROS - I had that in mind myself.
COURT - On further thought there may be the odd incrimminating statement or question, if we could get her to tell it on her own let us try it without. What do you think Mr. Dahmen?
Witness- Yes I think so, I don't know exactly what happened.

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF R.P. 83 (B)

WITNESS WITHDRAWS

FIRST WITNESS FOR THE PROSECUTION FRAU ELFREIDE DAHMEN IS RECALLED

Q.37 This witness is already sworn, just start at the point please where you were in this room with Kozak and then when the accused first appeared first appeared, please start there?
A.37 When Kozak upstairs was with me then the door opened and Russell came in. He was talking with the other person and I did not understand him, I only heard Kozak say "another two minutes", Russell went downstairs, I could hear that and after two minutes he entered the room again and started to undress himself, pushed away Kozak and did the same with me.
Q.38 What did he do literally?
A.38 He raped me.
Q.39 Did he actually put his organ inside your body?
A.39 Yes.
Q.40 Did you fight or make a noise, or scream?
A.40 No.
Q.41 Why did you not?
A.41 I was scared if I did fight he would shoot me.
Q.42 He had a pistol but it was not on his body.
Q.43 Where was it?
A.43 The pistol was on a chair.
Q.44 What happened after that?
A.44 After that I got up and dressed myself.
Q.45 When. Did anyone else come to the room?
A.45 When I started to dress myself, I was sitting on the bed, the door opened and an officer came in, I forget that Kozak came in another time before the officer entrered the room.
Q.46 What did Kozak do?
A.46 He entered the room when I was dressing and pointed out with gestures I was to undress myself again.
Q.47 Did he go out of the room or did he stay in the room?
A.47 He remained in the room and I was sitting on the bed and Kozak was standing before me and then the door opened and the officer came in and he came right up to Russell.
Q.48 What did Kozak do?
A.48 Kozak must have left the room. I don't know exactly what happened I only know the officer entered the room.
Q.49 Did anyone come upstairs with the officer?
A.49 I think there was another one, he wore a black hat.
Q.50 Did your husband come?
A.50 Yes, I heard my husband downstairs and I called to him and he came

Q.51 Did you tell anyone at that time what had happened?
A.51 Yes, my husband.
Q.52 What did you say, what were your words, do you remember?
A.52 I told him the whole story, and told him that this man had raped me.
Q.53 Did you tell him this at that time in the house?
A.53 No, I told him that night.
Q.54 What did you say to your husband then and there in the room?
A.54 My husband entered the room and he was pretty nervous and he asked if they did something to me and I said yes.

CROSS EXAMINED BY THE DEFENCE

Q.55 When Russell pointed to your watch did he have his pistol in his hand or merely on his side.
A.55 No he did not have his pistol in his hand.
[illegible]
Q.56 When you were in the room previous to this time was he pointing his pistol around or was it always on his side,
A.56 As soon as someone was talking or made a movement he drew his pistol.
Q.57 He did not have it pointed at you when he took the watch?
A.57 No.
Q.58 After you were in the room with Kozak and Russell came in and Kozak left you did you make any movement to get up?
A.58 How do you mean movement
Q.59 Did you start to get up and dress or anything like that?
A.59 No, I did not.
Q.60 Just what did you do.
A.60 I do not understand.
Q.61 When Kozak left you was Russell at the immediate beside?
A.61 Yes at once.
Q.62 Did he make any attempt to hold you down?
A.62 I was not yet allowed to get up.
Q.63 Did you try to get up?
A.63 I don't know anymore, I was only scared.
Q.64 Did you start to cry anytime?
A.64 I was awfully nervous and scared and I did not know what to do.
Q.65 Did Russell appear to be drunk or very drunk?
A.65 He had drinks in the room downstairs.
Q.66 Did he seem drunk in the room upstairs with you?
A.66 He was not drunk anyway.
DEFENCE At the summary of evidence her statement is "I hated the second soldier"
PROS I think that is a mistake in the copying in the summary, that is a copy the defence has.
The summary in the hands of the court is checked and reads "I noticed the second soldier was drunk and I pushed him away"
Q.67 In the summary of evidence the statement is made, the seonnd soldier was drunk and I pushed him away, why did you make that statement then?
A.67 I did think about it later on if he was really drunk but he could be tired.
Q.68 Your statement at this trial is that he was not drunk, the one you made at the summary is incorrect?
A.68 I cannot tell I con't know the difference between drunk and under the influence. I only know if someone is fairly drunk.
Q.69 What would you say the accused was at this time?
A.69 I could tell you one person can drink five glasses and other ones can drink more.

QUESTIONED BY THE COURT

Q.70 Will you tell briefly what happened when you came in the room in the first place?
A.70 I entered the room.

Q.71 No, why did you go up to the room in the first place?
A.71 I went up to my room for in my room were two chairs, it was a living room and bedroom at the same time.
Q.72 Why did you go upstairs at all?
A.72 I had to go because he grabbed me by the arm?
Q.73 Did you see the accused, can you tell us briefly what you saw of the accused only downstairs, what was he doing?
A.73 Most he was sitting in a chair and Kozak was speaking, he appeared to be the person who had to say most.
Q.74 What was the accused doing?
A.74 The accused only did what Kozak said and he watched us when we were moving or standing up
Q.75 Will you clear that up, did he just watch you or something else?
A.75 As soon as somebody was moving in the room he drew his pistol and pointed it out to several people in the room.
Q.76 When you left the downstairs where was your father in the room?
A.76 When I left the first time or the second time?
Q.77 The second time?
A.77 My father was lying on the floor.
Q.78 And Mr Bornheim, where was he?
A.78 Mr Bornheim was lying beside my father in the same attitude
Q.79 Under what circumstances did they come to be in that attitude?
A.79 Kozak came into the room from the writing room, he was carrying a radio set, he threw the radio set on the sofa and pushed my father on it.
Q.80 Where was Russell?
A.80 He was sitting on a chair in the corner.
Q.81 Did he have his pistol in his hand or in his holster at the time?
A.81 I cannot tell you that exactly, but I think it was on the table in front of him.
Q.82 Continue from there, from where you left off, Kozak forced your father on the sofa?
A.82 Kozak got my father and put him on his legs and showed him he had to undress his waistcoat and jacket.
Q.83 How did he get on the floor?
A.83 He took away my father's stuff, he was saying in English to my father and he did not understand, to lay on the floor, and he showed him.
Q.84 Your father did lay on the floor?
A.84 Yes.
Q.85 You say you went upstairs because he took you by the arm, who do you mean by he?
A.85 Kozak.
Q.86 He took you upstairs into what room?
A.86 He went to the room of my parents and I went straight to my own room and he followed in behind me.
Q.87 Why did you go upstairs with him?
A.87 He grabbed me, I could not leave the house, so I had to go upstairs with him.
Q.88 Why could you not leave the house?
A.88 I was afraid I would be shot if I tried to do anything like that.
Q.89 Did you believe you would be shot if you ran away?
A.89 Yes I believe that I would.
Q.90 Xxx Now you went upstairs and Kozak followed you into your room?
A.90 Yes.
Q.91 What did he do then?
A.91 No answer

JA Would you explain to the witness the only reason she is being questioned again on this is to make the story come out in the proper order in the record.

Q.92 Tell us briefly what happened when you came into the room with Kozak?
A.92 I was sitting on the chair and he was standing in front of me and after a while he pointed out to the bed. I did

not want to do that and I told him to let me sit in my own chair. Then he pointed to the bed and ordered me that I would lay down on the bed. Then I sat down on the bed and he said to me I should undress myself. I did not want to do that and he caught me by the jumper and I was scared if I did fight I would be shot down. After that I undressed myself and after that he raped me.

Q.93 You have said that Russell came into the room and Kozak said another two minutes, is that right?
A.93 Yes
Q.94 At that time was Kozak having sexual intercourse with you or had he finished?
A.94 No, he had not finished.
Q.95 You said Russell came back into the room a few minutes later?
A.95 Yes.
Q.96 Where was Kozak when he came into the room?
A.96 He was always with me.
Q.97 Where in the room was he when Russell came in the second time, on the bed or standing up by the bed.
A.97 In the bed.
Q.98 When Kozak finished this sexaual intercourse, Russell was already in the room then?
A.98 Yes. Meanwhile he undressed himself.
Q.99 Russell undressed himself while Kozak was still having sexual intercourse with you?
A.99 Yes.
Q.100 When Kozak completed the act he left the room?
A.100 Yes.
Q.101 Did Russell then come into the bed with you?
A.101 Yes at once.
Q.102 Did you see whether or not Russell had a pistol when he came into the room?
A.102 Yes he had a pistol in his belt.
Q.103 Did he have it out at any time in there?
A.103 No, he did not.
Q.104 Why did you not fight Russell to prevent him having intercourse with you?
A.104 I could not do it because I cannot fight against a man and I had to think that he would shoot me down.
Q.105 Did he threaten you with a pistol at any time?
A.105 No he did not.

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH PROVISIONS OF R.P. 83 (B)

WITNESS WITHDRAWS

THIRD WITNESS for the Prosecution — Paul Stachlschmidt, Paul Strasse 6, Meppen, Germany, having been duly sworn is examined by the Prosecution

Q.106 Your name is Paul Stahlschmidt, of Paul Strasse 6, in Meppen, Germany?
A.106 Yes.
Q.107 You are a German civilian and an inhabitant of Germany?
A.107 Yes
Q.108 You are the father of the woman Frau Elfreide Dahmen?
A.108 Yes
Q.109 On the 10th of April this year were you in your home in Meppen, Germany?
A.109 Yes.
Q.110 What time did you go to your home?
A.110 It was between two and three o'clock in the afternoon.

Q.111 Who did you find there when you got there?
A.111 In the house were four Canadian soldiers.
Q.112 Look around the court and see if you recognize anyone that was there?
A.112 Yes (Identified the accused)
Q.113 Just tell us what was going on?
A.113 When I entered the room the four soldiers were sitting on chairs and there were two bottles on the table, one of the soldiers, he was in here this morning, ordered a couple of glasses, I fetched down the galsses and the one who was in here this morning ordered schnappes. I did not want to get it, but my older daughter fetched two bottles with some schnappes. He ordered me to fetch down another two glasses, poured out of the bottle and ordered my wife and me to drink, then after that he took the second bottle and we had to drink again. After that he started to open my writing desk, and then he searched it. Meanwhile, he discovered in my writing room my shot gun which was ready to turn in, and then he came to the room with the small rifle and ordered me to get the ammunition and then he loaded the rifle and fired a shot into the ceiling.
Q.114 What then?
A.114 When someone was talking he shouted at them. Then my youngest daughter entered the room and the one who was here this morning pushed her into the room and made her sit down in a chair, and then after a while he took out of the room my youngest daughter.
Q.115 What is her name?
A.115 Elfreide Dahmen. He then returned with her to the room and he did not appear to do something to my daughter and my daughter told me he is not so bad. Then he had a talk with my granddaughter he took her beside him and was very nice to her and offered her a bar of chocolate Then at once he jumped up and shouted something in the room and I had a feeling he said it is different now.
Q.116 Who is the he through all this?
A.116 It is the one that was this morning in here,
Q.117 Where was the accused at this time?
A.117 The accused was sitting in the corner and trying to talk to my eldest daughter who could speak a littel school English and then he ordered me to go in my writing room and his pistol was out.
Q.118 Which one ordered you?
A.118 The one from this morning.
Q.119 Where was he when he did this?
A.119 It was in the same room in the big room.
Q.120 Was the accused there?
A.120 Yes, the one Kozak pulled his pistol and ordered me to to to my writing room where my radio was.
Q.121 Did you come back to the room where Russell was?
A.121 When I entered the room again the accused was watching us, then Kozak went upstairs with my daughter. I was on the floor at that time.
Q.122 How did you get to the floor?
A.122 Kozak ordered me to lay down on the floor, before that he took all my stuff and my waistcoat and jacket.
Q.123 Was Russell present when Kozak ordered you to lay on the floor?
A.12 3 Yes.
Q.124 Did anyone else come i to the room at that time ?
A.124 Herr Bornheim entered the room and had to do the same thing
Q.125 Were any goods taken away from anyone that you saw?
A.125 I did not see that I only heard Herr Bornheim ask for them to give back his wife's jewels.
Q.126 Did you see anything taken from anyone else?
A.126 My watch which I gave him, my pocket knife and my hunting dagger and my keys.

Q.127 Who got these?
A.127 Kozak
Q.128 Were these taken from you in the room where Russell was?
A.128 Yes.
Q.219 Was anything taken from anyone else there?
A.129 I cannot tellyou that.
Q.130 What happened after that, you are lying on the floor, Kozak has gone upstairs with your daughter.
A.130 After that Herr Bornheim had to lay down beside me the accused watched us and as soon as someone moved he was shouting and had his pistol in his hand. Herr Bornheim succeeded in getting away when the accused did not watch him. He was getting behind Herr Bornheim and after came back and was sitting on a chair, and then he ordered my wife and the woman of the neighbourhood and my daughter to lay down beside me. He watched us always with his pistol out, and after a while he stood up and went to the door and I heard he went upstairs. After a moment he came back. After a moment he stand up again and went out of the room and went upstairs, I heard him climb the second part of the stairs.
Q.131 Then what did you do?
A.131 After that I jumped up, opened the window and jumped out and went away, I wanted to go to my son-in-law who speaks very good English and we want to go to a unit somewhere.

CROSS EXAMINED BY THE DEFENCE

Q.132 These drinks that were offered and that you had to drink, were they the first ones out of the bottle?
A.132 Yes
Q.133 At the time the accused Russell came to your house, when you came in did he seem drunk?
A.133 No he was not.
Q.134 At any time during his stay there would you say he appeared drunk?
A.134 I could not notice it. Both knew what they were doing.
Q.135 From their actions did it at any time appear that they had been drinking previously rather than drunk?
A.135 No
Q.136 What happened to the other two soldiers you mentioned?
A.136 The other soldiers went out of the room, they were ordered to go out of the room, and then I heard them go upstairs and then downstairs, and I did not see them after that.
Q.137 Who seemed to be the leader of this group?
A.137 Kozak, he did the talking.
Q.138 Did Kozak give you the impression he was looking for firearms, or radios, or anything like that?
A.138 I put it on the paper on my door, I know that Kozak reads the paper on the door, where my radio, hunting rifle was ready to turn in.
Q.140 Did Kozak give you the impression that at any time he was looking for your guns, radios, cameras, or anything like that?
A.140 No, the first time, no.
Q.141 Do you remember telling your daughter to acede to the wishes of one of the soldiers when he told her to sit down when she entered the house?
A.141 No, not at all.

IN THE OPINION OF THE COURT AND OF THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF R.P. 83 (B)

WITNESS WITHDRAWS.

FOURTH WITNESS for the Prosecution — Hermann Bornheim, Paul Strasse, Meppen, Germany, having been duly sworn is examined by the Prosecution

Q.142 Your name is Hermann Bornheim and you reside at Paul Strasse 4 in Meppen, Germany, is that correct?
A.142 Yes
Q.143 I understand you are a retired major in the police force?
A.143 Yes.
Q.144 On the 10th of April this year did yougo to the house of your neighbour at Paul Strasse 6?
A.144 Yes.
Q.145 About what time?
A.145 It was about 4 O'clock or 4:30
Q.146 Who did you find there?
A.146 Both soldiers who are accused today and the family of Stahlschmidt.
Q.147 How many soldiers were there?
A.147 Two soldiers.
Q.148 Do you see any of them in this court?
A.148 Yes (Identifies the accused)
Q.149 What members of the family were there?
A.149 Herr Stahlschmidt, Frau Stahlschmidt, two daughters, the grandchild and a woman whom I do not know.
Q.150 What happened?
A.150 After Herr Stahlschmidt was order to lay down on the floor and I was robbed, the other soldier went out of the door with the daughter of Herr Stahlschmidt and ordered the other soldier to watch us. I was laying on the floor and I asked the soldier a couple of times if I could go away.
Q.151 Which soldier?
A.151 The other soldier was upstairs and this one was alone (pointed to the accused)
Q.152 How did you come to be on the floor?
A.152 The other soldier who was upstairs ordered me to lay down.
Q.153 Go on from there?
A.153 I was thinking about fleeing somewhere and I saw that one door to the other room was open and jumped up and ran throughthe door and went away through the garden on the street. When I was fleeing I heard someone calling on me, but if he came behind me I do not know.
Q.154 You do not know who it was?
A.154 It must be that soldier he was the only one in that house I do not know what he was telling me for I do not understand
Q.155 Did the accused have any weapon when he was shouting at you?
A.155 Yes, he had his pistol out.

CROSS EXAMINED BY THE DEFENCE

Q.156 During this little episode on the 10th was there anything to lead you to believe that the accused had been drinking?
A.156 He had been drinking something but he was not drunk.
Q.157 I Did he act as though he were under the influence of liquor,
A.157 I could not tell you for he was sitting on the chair.

IN THE OPINION OF THE COURT AND JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH PROVISIONS OF R.P. 83 (B)

WITNESS WITHDRAWS

FIFTH WITNESS for the Prosecution — Lieut. L.B. Walker, 221 Det Mil Gov 4 Cdn Armd Div having been duly sworn is examined by the Prosecutor

Q.158 Your rank, full name and unit please.
A.158 Lieut. Leonard Bryan Walker, 221 Det Mil Gov.
Q.159 On the 10th of April this year were you in the town of Meppen, Germany?
A.159 Yes, sir.
Q.160 As the result of a complaint made to you did you go anywhere?
A.160 I went to No. 6 Paul Strasse in company with Lieut. Boxseau.
Q.161 What did you find there?
A.161 I entered the house and could find no one downstairs, and went upstrirs and looked into a bedroom and there I saw L/Cpl. Russell.
Q.162 Was that the accused?
A.162 Yes, he was lying face down on the bed, I pushed the door open and entrered the room, he was then commencing to climb off Frau Dahmen, who was lying face upward underneath him. He was clad only in his vest and underpants, she was clad in a vest and stockings. I notice that his penis was exposed, partly erect and was steaming. He stood at the side of the bed and looked at me. The girl looked at me and spoke in German, but I did not understand her, but from her actions I felt that she was appealing for help. I told the Cpl. to dress. His clothes were lying on the floor and he was almost dressed when I noticed weapons on the floor under his clothes. I took possession of the weapons which consisted of one German P.38 revolver, which was loaded with one in the breach, one colt type revolver fully loaded with the exception that one cartridge was only a blank shell, and the blank shell was at 120'clock and there was a .22 rifle which had one round in the breach and two in the mag. The two revolvers were in holsters and had web belts attached. Having taken possession of the weapons, I heard Frau Dahmen crying and on looking around I saw that she had commenced to dress, her clothes being scattered on the bed. Her husband then came into the room, made himself known to me and I requested him to ask his wife exactly what had happened because she only spoke German and he spoke English. He spoke to his wife then turned to me and said
Q.163 Did he say this in the presence of the accused?
A.163 Yes
DEFENCE - I don't think this is admissable because he asked the question in German which the accused does not understand.
JA — What the husband said was in English and well understood by the accused.
Q.164 Continue
A.164 My wife says she has been raped by this soldier and by one other.
Q.165 Was the accused standing there at the time?
A.165 He was there.
Q.166 What did he say?
A.166 He was dressing but he said nothing. I took the accused to one side after he had finished dressing and left the woman to her husband who was crying and told the accused of the compalint received, that this woman said he had raped her. I cautioned him, I said, You are not obliged to say anything in answer to the compalaint but anything you do say I shall take down inwriting and it may be used in evidence. I then said do you wish to say anything to explain your presence here. He made no reply. The husband then said to me, my wife states that the soldier has stolen her watch from her wrist. I turned to him and said have you taken the watch. He said no. I told him to empty his pockets and from the first pocket on the left breast he produced a gold wrist watch and bracelet, which the wife identified as hers.

Q.167 Then what happened to the watch?
A.167 I retained it until after the orderly room and was instructed then to hand it back. I then took the accused into custody and while talking to the husband I saw the accused running downstairs. I gave chase and he ran into the road and I lost sight of him for a while. At that time I was still carrying the rifle and pistols, and I saw fresh footprints through a fresh dug flower bed, and I threw the weapons under a bush and followed across several gardens and saw the accused running across a field. I overtook him and stopped him about 400 yards away from the house. I was walking him back towards the detachment office and an officer with a jeep overtook us going towards the office and I requested his assistance, put the accused in the jeep and going towards the office I saw Lt. Boxseau proceeding towards the office with Kozak and took them into the jeep and proceeded to the office. I then communicated with the 2 i/c of the accused's regiment, Major MacKenzie.
Q.168 What did you do after that?
A.168 I returned to the house and found in the sitting room a fresh hole in the ceiling and particles of plasteron the back of the settee. On the table were five or six glasses, and four bottles, one contained liquor similar to conyac, one red wine, and another bottle containing conyac, and one of vermouth all partly consumed.
Q.169 What was the condition of the house?
A.169 It was in good condition except the contents of the drawers were strewn around the rooms.

CROSS EXAMINED BY THE DEFENCE

Q.170 What was the condition of the accused with reference to alcohol?
A.170 He definitely had had something to drink but he was far from drunk.

QUESTIONED BY THE COURT

Q.171 When you ordered the accused to turn out his pockets and he turned out this watch did he say anything?
A.171 He did not say anything.
Q.172 Did he say anything after?
A.172 He found one or two papers then handed me the watch.
Q.173 Did he not say one word from the time you entered this room?
A.173 Not one word.

IN THE OPINION OF THE COURT AND OF THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH PROVISIONS OF R.P. 83 (B)

WITNESS WITHDRAWS

SIXTH WITNESS for the Prosecution — Lieut. G.T.J. Boxseau, Netherlands Army att 4 Cdn Armd Div having been duly sworn is examined by the prosecutor:

Q.174 You are Lieut G.T.J. Boxseau, Netherlands Army attached to 4 Cdn Armd Div?
A.174 Yes
Q.175 On the 10th of April this year did you go in company with Lieut Walker to Paul Strasse 6 in the town of Meppen, Germany?
A.175 Yes.
Q.176 What did you find there?
A.176 We found nothing downstairs and went upstairs and I found a soldier in a bedroom.
Q.177 Was it the accused?
A.177 No.

Q.178 What happened next?
A.178 He went downstairs and I brought him back, and then in another bedroom I saw the accused and Lieut. Walker and a woman who later proved to be Frau Dahmen, she was dressed in underwaar and vest and the soldier was getting dressed. The girl was crying and seemed very excited. Lieut. Walker told the soldier to dresshimself and the girl asked about a gold wrist watch and I heard Lieut. Walker ask the soldier and the soldier took it out of his pocket and gave it to Lieut. Walker. Then the husband came in, I did not understand all that was said but I understood the girl was saying about being raped.
Q.179 What language was she speaking?
A.179 German
DEFENCE - That would be inadmissable.
PROSECUTION - It would beevidence of early complaint
A.180 She did not say it exactly.
Q.181 What were the words she used?
A.181 She did not say he raped me she said, He was it who took me.
Q.182 What happened after that?
A.182 When the soldier was dressed Lieut. Walker ordered him to go downstairs and in a few minutes I missed him and saw them running downstairs. Mrs. Walker and I ran after them he went after the accused, and later I met them on the street and he had the accused and then we went to the office of the soldier's unit.

CROSS EXAMINED BY THE DEFENCE

Q.183 Did you accused seem to be under the influence of liquor?
A.183 I cannot say that I was not close enough to him.

IN THE OPINION OF THE COURT AND OF THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF R.P. 83 (B)

WITNESS WITHDRAWS

THE PROSECUTION IS CLOSED

CLOSING ADDRESS OF THE PROSECUTION

If it please the court the first charge is rape. I don't intend to deal with any of the evidence at great length, the judge advocate will advise you as to the law. You have seen the complainant and you have heard her story. She alleges that she was raped, that there was penetration. There is evidence of fresh complaint, and there is co-oboration of the strongest character and it is surplucous to say anything further.

That eliminates at the same time the second charge.

With regard to the third charge I submit that it is a fact of which the court can take knowledge of under RP 74 in respect to fraternization. It has been proven that the accused was in the house of a German civilian and he was conversing with members of the family. It is true that at times he was menacing this family, but at other times he was drinking and conversing with civilians. It is my contention that is fraternization.

With regard to the fourth charge of robbery with aggravation, is robbery under circumstances, I think the JA will say that the threat of firearms if robbery with aggravation. As I recall it, the accused did not have a pistol in his hand when he took the watch, however, he was carrying a pistol and there were two armed soldiers in the room, the arms had been freely displayed and pointed at various people, and I submit that robbery under these circumstances is robbery with aggravation. The robbery is proved in that there is the evidence of the complainant and evidence that the accused had the watch, it was taken from him by Lieut. Walker. It is my submission that the first, third and fourth charges have been proved

CLOSING ADDRESS OF THE DEFENCE

With reference to all the charges, I must point out to the court that the witnesses in the most are German people, members of the Reich, and their evidence no doubt will be somewhat biased against any allied soldier. This must be given consideration when considering this case.

With reference to the first charge the defence is taking no issue that there was the actual act. Of course the only thing to bring in the question, is the question of consent and what actually means consent in the case at bar. There was another soldier previously who was upon the same charge before the same court and the facts in his case may be considered, that the girl when she went upstairs with him was under a certain amount of duress, and she allowed this chap Kozak to have intercourse under the circumstances. However, in the case of the accused the circumstances are somewhat different and it is a question of fact whether or not there was consent. The circumstances are that the accused goes into the room and there is his comrade who is having intercourse and the sight in itself plus the fact he had been drinking, excited him and naturally he wishes to fall in line and starts to undress and at the first chance gets into bed with the girl. She makes no overt act to stop him. The only evidence as to her condition of mind was that she was still frightened of the pistol which the accused might have and I bring to the attention of the court it is part of the dress of a soldier to be armed. He had brought it out on one occasion but that was to stop any movement in another room. At this time then, I wish to submit to the court that the girl by her actions in this case didnot make any move of not consenting to the act. I think she was really past the stage of thinking whether or not in this case the accused would shoot her or her father and the fact that she did not cry or scream amounts to a form of consent. Consent in a case of this type would not be one that has to show openly that she is willing and that is the case at bar.

As to fraternization, the accused took little or not part in the affair, he sat in the corner on a chair. The only time he had anything to do with it was when the men were lying on the floor and he was standing and when they moved then his pistol came into evidence. I submit that is far from any definition of fraternization. The evidence shows they were looking for firearms or wireless, and it would be reasonable for the court to assume that the accused felt they were doing a military duty rather than being friendly with civilians.

The fourth and last charge is one where robbery took place, robbery with aggravation, is the charge itself, and it is my submission here that the evidence shows the girl gave him the watch when he pointed to it. There was no action on his part to take the watch, he pointed to it and she handed it to him. The evidence shows that when the girl entered the room and was told to sit down she obeyed when told to by her father. I submit that this is a girl who always obeyed her father and she felt that whatever happened after that she was to acede to it, and when the accused pointed to her watch, she saw he wanted it and gave it to him. I feel that does not come within the meaning of robbery with aggravation, and such is my submission to the court.

SUMMING UP BY THE JUDGE ADVOCATE IN THE CASE OF B.45809(L/Cpl) Pte. Russell, L.W. - A & S.H of C

Sir, the court must now determine what facts have been proven. The evidence is not excessive in quantity and the issues are quite clear cut. The most confusing element in this case is the fact that the court has only today completed the hearing of another case very similar in the evidence and in the charges. I therefore must emphasize the necessity of the court eliminating from their minds all evidence given in that case and likewise the addresses by the Prosecuting and Defending Officers and the summing up by myself.

Because of that last fact I must now sum up in this case as if no other case had been heard. On those questions of fact the court is of course the absolute and only judge. On questions of law I must advise the court and the court should follow the advice of the Judge Advocate.

The first charge is a charge of rape, that in Germany on the 10th of April the accused had carnal knowledge of Frau Elfreide Dahmen without her consent. Carnal knowledge is complete upon penetration to any extent. The definition of rape is the act of a man having carnal knowledge of a woman who is not his wife without her consent, or even with her consent, when such consent has been exhorted by fear of death or bodily harm. The fact that a woman has consented to submit to an act of sexual intercourse is definitely a factor to be considered whether or not the voluntary consent has been given, but submission in itself does not necessarily prove voluntary consent. There has been conflicting evidence with regard to an early complaint made by the girl in this case. It will be for the court to determine whether or not the complaint was made at the earliest reasonable opportunity and if so what was the complaint of. If the court finds that there was in fact a complaint made by Frau Dahmen that this accused had raped her they can consider that fact in deciding whether or not such a complaint is consistent with the evidence which he tells and they may consider that complaint as evidence tending to disapprove consent. Such a complaint is not independant substantive of evidence of the facts contained in the complaint nor is it cooborative of the complainant's evidence. It is my duty to warn the court of a fact which in any event is self evidence namely, that it is most dangerous to convict an accused person of an offence of this nature upon the evidence of the complainant, unless it is cooborated in some material way by independant evidence. Such evidence may be direct evidence or it may be circumstantial evidence. In the latter case, however, it would not be considered cooborative if it were not consistent with one or more points of view. The cooboration must be evidence not coming from the complainant herself, and should cooborate not only the identify of the accused as the person implicated but also the fact that a crime has been committed. In this case the evidence of Lieut. Walker is evidence which cooborated the identity of the accused and the fact that an act of sexual intercourse took place. The weight to be given that evidence is a matter for the court. There remains the question of consent. The complainant has testified that she submitted to the act because of fear of being shot. It is quite proper for the court to consider not only the evidence they have here as to the accused's actions preceding the offence and subsequent to the offence and as to the conduct of the complainant herself immediately before and after, but it is also proper for the court to take Judicial notice of the fact that we are at war, the stage that war has reached and the relations existing between the German people and ourselves. A thorough consideration of all these factors must assist the court in deciding whether or not it is reasonable to accept the complainant's evidence, that

fear was engineered into her mind by the actions of the accused in the particular place and at the particular time that he did those acts. Much evidence has been produced relating only to the question fo consent and relevant only to the state of mind of the complainant. I particularly wish to point out that if the soldier Kozak is guilty of rape then this accused cannot be held in any way responsible for the act of Kozak in this trial, even though it has been admitted in evidence, its purpose is only on the question of the state of mind that the complainant had on this night. Similarly evidence of any offence or acts committed by Kozak downstairs before the offence took place are admitted in evidence not for the purpose of fixing responsibility for those acts on the accused, but in order to show what the state of mind of Frau Dahmen was and whether or not her explanation of her conduct is reasonable. Lt Walker has given evidence that her conduct is reasonable. Lt Walker has given evidence that he told the accused that the complainant had alleged that he had raped her and that the accused did not reply.
(The J.A. reads from page 84 MML)
If the court feel that on this occasion the circumstances were such that they called for a reply then it is open to them to find that because of Russell's silence he was to some extent admitting the truth of the allegation. I wish to point out however, that one of the circumstances which they must consider in determining whether or not a reply was called for, was that on the second occasion when Mr Walker repeated the accusation, he also advised the accused that he need not say anything.

With respect to the second and third charges, it will be necessary for the court to comprehend the scope of the policy of non-fraternization. If they find that the extent of that policy is a notorious fact, they do have power under the rules of procedure to take judicial notice of that policy. It is obvious that the standards of behaviour which we expect from a soldier vary from age to age and from time to time and the court must consider whether the act of the accused complained of in the second and third charges, under their own peculiar circumstances, is such that it is culpably improper I want particularly to point out that the wording of the third charge is such that the court has to decide on that charge, whether the actions of the accused in the living room downstairs were culpably improper. They are deciding whether his actions in drinking and conversing with the civilians was in fact fraternization, that no matter how reprehensible his actions were, he could not be found guilty of the third charge as it is worded, however, in deciding whether or not he was fraternizing I again emphasize that the court must consider the evidence heard in this case and not be influenced by any other evidence

With respect to the last charge:-
(JA reads from Archbolds' page 597)
It is not necessary that the good be removed by forcible or physical act of the accused. It is sufficient to prove the crime of robbery if the evidence is such as to satisfy the court that the complainant was in such an apprehension of danger as to induce her to part with her property and that she delivered them up through fear and apprehension caused b the accused. In this case the charge is robbery with aggravation. That differs from simple robbery in that it is necessary to prove that the person at the time of the robbery was armed or had an offensive weapon. Provided the elements in the definition of robbery are present, it is only necessary to prove that he used that weapon in a threatening manner.

It only remains to advise the court that the accused is innocent until he is proven guilty and the onus of proof remains on the Prosecution throughout, not only to prove the guilt of the accused but to prove his guilt beyond all reasonable doubt. A reasonable doubt is not a remote possibility that a cowardly court might clutch at for acquittal. It is a doubt of some substance. This term which is incapable of a

precise definition, but it is one that can be comprehended without difficulty. If there remains in the minds of the court a doubt as to the accused's guilt then he must be given the benefit of that doubt.

Is there anything further you wish me to say Mr. President?

NO

And you Capt Wasson

No, that covers it

And you Capt Lewis

NO.

FIRST WITNESS for the Defence — Capt. W.H. Mills, Argyle and Sutherland Highlanders of Canada, having been duly sworn is examined by the Defence

Q.1 Do you know the accused in this case?
A.1 I do.
Q.2 How long have you known him or of him?
A.2 Since July, 1940
Q.3 How long has he been with your Regiment?
A.3 Since July 1940
Q.4 What is his general character in the Bn?
A.4 Very good.
Q.5 Do you know anything about his ability?
A.5 I am interested in him as Ccy Comd and I usually make inquiries about the progress and I have been informed on different occasions that he is very willing and cooperative.
Q.6 Is he the type of man you would be willing to have with the Regt?
A.6 Yes.
Q.7 Would you like to have him back?
A.7 Yes
Q.8 Do you know anything about his honesty?
A.8 I have no reason to doubt his honesty.

THE PROSECUTION DECLINES TO CROSS EXAMINE

IN THE OPINION OF THE COURT AND OF THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH R.P. 83 (B)

WITNESS WITHDRAWS

PLEA IN MITIGATION

The case has been before the court and the circumstances surrounding it for the better part of the day. However, there are a few points which I think should be taken into consideration by the Court in considering the sentence.

Facts about the person of the accused, are, he is 23 years, 11 mos old and joined his present unit in July 40 and has been with them since that time. He is a L/Cpl. and must have had some ability. The character witness has pointed out to the court that he had been very good. I think that should be taken into consideration. He was with the unit in Jamaica and in England and up to the time of the attack at Meppen. He has been well forward on many occasions and has done everything that a soldier could do and has been a very good soldier. His parents are living in Canada and there has been some family trouble which may have to some degree influenced him. The fact that this mother and father have separated, his father is a retired medical practitioner. Quite recently his mother has left his father and he has felt quite badly about the situation and wants to get home and see the family again. As the evidence pointed out this Kozak was the real leader the accused merely followed him, he is the type of person easily led and finds himself in this unfortunate position. However, I think the court would be in keeping with the general practice if they were to give the accused greater leniency in respect to sentence than the person he followed. Consideration must also be given to the fact that the accused had been drinking and was not used to the wines and spirits of the continent. As pointed out in respect to the robbery there was no overt act, there was no threateneing manner, he merely pointed to the watch and the girl gave it to him. I think that with all the circumstances of this case the court should deal with this accused as leniantly as they possibly can do.

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

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

Number	Rank	Name	Regiment (or as the case may be)
B.#9809	Pte. (L/Cpl.	Lawrence William RUSSELL	A & S H of C

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

* Strike out if not applicable

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

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

NO FIELD CONDUCT SHEET AVAILABLE FOR THIS MAN

For .... times

For .... times

For .... times

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

3.* The accused at the present time is under sentence for .....NA.....

beginning on the ...NA..... day of .....NA.....

4. The accused has been awaiting trial on the present charges for ..... days in civil custody; and for ....8 days in military custody, making a total of ...8... days of which ....no days were spent in hosp.

5. The present age of the accused is .....23 yrs 11 mon

6. The date of his attestation is 8 July 1940.

7. The service which the accused is allowed to reckon is .....4 yrs 9 months.....

8. The accused is in possession of

CVSM & Clasp

9. (If the accused is a warrant officer or NCO). The accused has served continuously, without reduction, to the present date -

	Date of Promotion
In the substantive rank of ...Lance Corporal...	
In the war substantive rank of	.....
In the acting rank of	.....

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

Army Form B.296 (War)

SUMMARY OF CONVICTIONS BY A COURT - MARTIAL OR CIVIL COURT

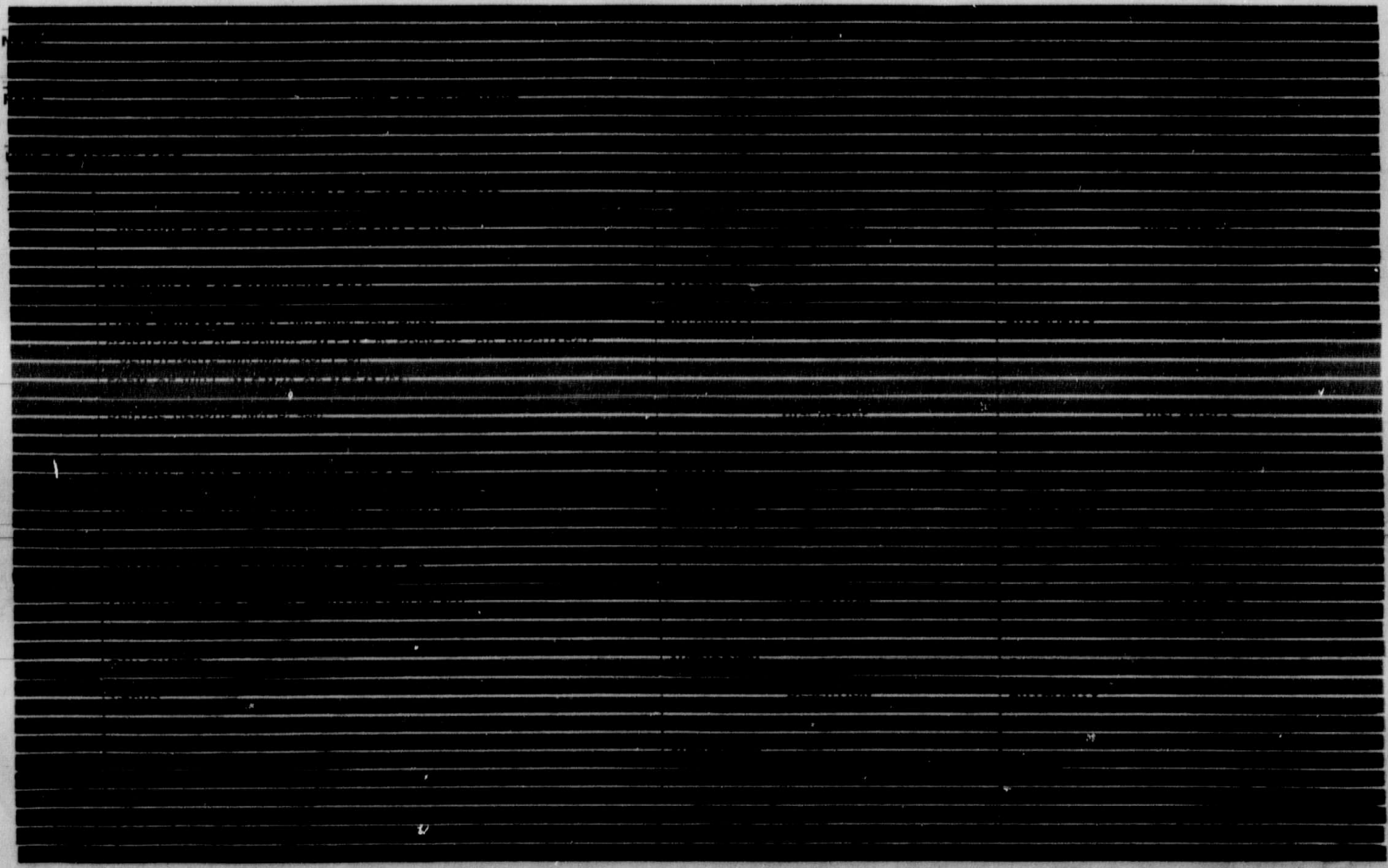
Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended
		NA		

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

Signed this 18 day of Apr 45

C I Bassett
Capt & Adjt

52-12 Cfm. Russell B. Nuspotted DNP by AFSA



B22-147

BSM - RUSSELL RD

FIELD GENERAL COURT-MARTIAL

CFA66 (In lieu of AFA3) 40/P.S.B.1608 (2864)

Convened by Order of Brig W C Hyde Comd R C A 4 Cdn Armd Div dated 13 Jan 44

ACCUSED.

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

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
C 26237	B S M (W O II)	Ray Douglas	Russell	23 Cdn F d Regt R C A

PROCEEDINGS REVIEWED
Blackwear Capt
15 Feb 44
REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS REVIEWED
FIRST ARMY

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Eng Coast on (date(s)) 13 Jan 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

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

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

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

A3. The Court is opened. The accused is (are) brought before the Court. At 1700 hours trial commences.

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

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

(1. KR Con 557. 2. AA 46(5), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ as interpreter? Ans ~~No sir~~

~~The Interpreter is sworn.~~ (1) Do you object to M/11436 S/Sgt E Elliott as shorthand writer? Ans No sir

The shorthand writer is sworn.(1)

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

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

Ans No sir (2)

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

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

President	Major E H Worwick 8 Cdn A Tk Regt
Member	Capt A Melville 8 Cdn Lt A A Regt
Member	Lt F B Thompson 13 Cdn I d Regt
Judge-Advocate	Major W A D Burn 11 9 4 Cdn Armd Div
Prosecutor	Lt W H G Cameron 23 Cdn Fd Regt SP
Defending Offr	Lt J W Blain 23 Cdn Fd Regt SP

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

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 33.)

A8. The accused C 26237 B S M (W O II) Ray Douglas Russell before arraignment make(s) (no) ~~(a)~~ plea (2)

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT

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

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

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

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

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

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

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

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 61, 62; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

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

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

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

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

President to accused: Do you wish to make a statement? Ans.....(4)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No thanks.....(1)

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

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

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

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

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

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

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

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

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

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

(1. RP 40. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

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

(1. RP 111, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

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

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

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

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

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

Ans.....

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

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

(1. MFB 353 or MFB 256. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans.....(2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 21.)

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

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

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

(1. Where several accused tried separately see RP 118. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182. RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

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

Accused: C2.6237 B.S.M. (now 10011) B.S.M. Roy Douglas Russell

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

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

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

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

~~Time in confinement awaiting present trial: a total of ..... days, of which ..... days was spent in hospital.~~ (1)

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

Sentence Awarded by the Court:

(Sgd) W.D.A. Gunn Major — Judge-Advocate, if any. 15 Jan 44 — Date awarded. (Sgd) C.H. Macdonald Brig — President (RP 45, 50.)

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

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

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

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

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

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

noted

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

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

Date 22 Jan 44

(Sgd) .....
(W. C. HYDE) Brig
CRA 4 CDN ARMD DIV
Commanding ..... Confirming Officer.

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

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CHARGE SHEET

BSM 084

The accused, C-26327(WO II) Ray Douglas RUSSELL,

(Special Increment) 23 Field Regiment, SP, RCA, a soldier

of the CANADIAN ARMY OVERSEAS, is charged with:- 1 CSM

First Charge
Sec.40.AA

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field, on 24 Dec 43 improperly and without authority took and used a Canadian Army Motorcycle

In the Field
10 Jan 44

R.B. Ferguson Maj
Commanding Officer
23 Fd. Regt., SP., RCA

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

15 June '44

W.C. Hyde
(W. C. HYDE) Brig
CRA 4 CDN ARMD DIV

E.J. Marriott Maj
President

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PA&N/1697 (2008)

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C.26327	BSM (WO II)		Ray Douglas	Russell	23 Cdn Fd Regt SP

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 15 Jan 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

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

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

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

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

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

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

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

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	C H Warwick	5 Cdn A Tk Regt

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	A Melville	8 Cdn Lt A Regt
Lt	F B Thompson	15 Cdn Fd Regt

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	J A Burns	8 Cdn Lt A Regt

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Major	W A S Burns	83 Cdn Armd Div

On Active Service in the Fd

in England (Country.)

Date 15 Jan 44

(Signed personally. RP 105 fn 2.)

(W. C. HYDE) Brig (Rank.)
CRA 4 CDN ARMD DIV
Commanding Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

C H Warwick Maj
President

I have examined B-11414 - BSM Russell, R.D., this morning and certify that he is fit to undergo trial by ~~[illegible]~~ F.G.C.M.

15 Jan 44

.....Capt RCAMC

C.W.S. Warwick Maj
President

The Prosecutor declines to make an opening address

First Witness for the Prosecution

Capt N Stewart, 23 Fd Regt SP RCA being duly sworn is examined by the Prosecutor

Q.1 You are Capt N Stewart, 31 Bty 23 Fd Regt SP?
A.1 I am.
Q.2 You were and still are on the 24th of Dec Bty Comd 31 Bty?
A.2 Yes
Q.3 I produce a certified copy of an extract from Regtl Part I orders do you recognize that?
A.3 I do.

The Defending Officer consents to the Prosecutor introducing a certified true copy of an extract from Part I Orders No. 70 d/10 Oct 43, which is accepted by the court and marked Exhibit A by the President for the purposes of identification.

Q.4 Did you authorize the accused to use any motorcycle for the 24th of Dec 1943?
A.4 No.
Q.5 In this Regt is anyone other than the Bty Comd, Bty Capt or O.P.O. authorized to issue work tickets?
A.5 Acting Bty Comds, Acting Bty Capts and acting O.P.Os and also the tpt Sgt is authorized to issue work tickets for certain authorized work.
Q.6 Who was the tpt Sgt on the 24th of Dec?
A.6 L/Sgt Aston R.H.L.
Q.7 I have here a rough sketch showing Meads Rd, Darley and Derwent roads and Chesterfield rd, is that a reasonable sketch of the area?
A.7 Yes I can recognize the area.

The Defending Officer consents to the Prosecutor introducing a rough sketch of the area which is accepted by the court and marked Exhibit B by the President for the purposes of identification.

Q.8 Can you point to the 31st Bty M.T. lines?
A.8 They extend from here point X on Darley Rd to point Y on Darley rd and from point A to point B on Derwent rd.
Q.9 Do they extend around the Bend?
A.9 They do not.
Q.10 Do Bty personnel live on Derwent rd?
A.10 Yes, between Darley and where the rd bends, they live on the west side.
Q.11 Do any of them live where Derwent rd runs east and west?
A.11 None of the Bty personnel.
Q.12 About what is the distance from A to B?
A.12 Between 125 and 150 yds.
Q.13 And from B to Meads rd?
A.13 About 50 yds.

Cross examined by the Defence

Q.14 How long have you been with the 31st Bty?
A.14 Since the spring of 1943.
Q.15 Your position in the Bty at that time was what?
A.15 Bty Capt.
Q.16 What is your position now?
A.16 Bty Capt.
Q.17 Have you ever been acting as Bty Comd?
A.17 I have.
Q.18 For what length of time?
A.18 A total period of about two months.
Q.19 During the time you were acting in that capacity has it been the custom for officers other than those mentioned to sign work tickets?
A.19 When acting in the capacity of an officer with authority to sign work tickets an officer could sign, but on the 24th of Dec 1943 only the three mentioned could sign.

Q.20 How long has Sgt Major Russell been with the 31st Bty?
A.20 Since about the first week in Dec.
Q.21 On the 24th of Dec do you think Sgt Major Russell would have known the M.T. lines and where they extended to, of the 31st Bty?
A.21 I would think so.
Q.22 Have the motorcycles of the 31st Bty always been kept in the one spot?
A.22 They were kept on the one spot for about two months prior to the 24th of Dec.

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Second Witness for the Prosecution

Major F.A. Robertson 23 Fd Regt SP RCA being duly sworn is examined by the Prosecution.

Q.1 You are Major F.A. Robertson, Bty Comd 31st Bty 23 Fd Regt SP RCA?
A.1 Yes
Q.2 Did you at any time authorize the taking or use of a motorcycle by the accused Fro the 24th of Dec 1943?
A.2 No.

Cross examined by the Defence

Q.3 Could the C.O. 2i/C or Adjt sign work tickets?
A.3 Yes they could, but they would not.
Q.4 Why?
A.4 Because in part I orders it was laid down that only Bty Comds Bty Capts and the C.P.O. would sign.

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Third Witness for the Prosecution

Lieut T.K. Mellroy 23 Fd Regt SP RCA being duly sworn is examined by the Prosecution.

Q.1 You are Lieut T.K. Mellroy 31st Bty 23 Fd Regt SP RCA?
A.1 I am
Q.2 You were and still are on the 24th of Dec 1943 C.P.O. of the 31st Bty?
A.2 I am.
Q.3 Did you at any time authorize the accused Russell to use a motorcycle on the 24th of Dec 1943?
A.3 I did not.

The Defence declines to cross examine

In the opinion of the court and the judge advocate it is not necessary to comply withthe provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Fourth Witness for the Prosecution

Lieut S.M. Pinkerton, 23 Fd Regt SP RCA being duly sworn is examined by the Prosecution

Q.1 You are Lieut S.M. Pinkerton, 31st Bty 23 Fd Regt SP RCA
A.1 That is correct.

Wost

Q.2 Will you tell the court what happened on the night of the 24th of Dec 1943 in relation to the accused?
A.2 On the night of the 24th of Dec in company with another officer of the Bty Mr. Hood we left the officers mess and went up to the bus stop on Mead and Derwent rd. We decided not to wait for a bus but to walk to town and as we passed Derwent rd in which we knew our MC lines were, we heard a motorcycle start. We went across the rd to investigate and I recognized Sgt Major Russell and Sgt Major Harris astride two machines. I asked where they were going and Sgt Major Harris said up on the hill. I told them they were both under arrest and to return the bikes to the MC lines and I asked if that was clear and Sgt Major Harris said Yes sir and I am not sure if I got an answer from Sgt Major Russell. I did not ask for the work tickets nor did I take the number of the machines.
Q.3 Were they Can Army machines?
A.3 Yes.
Q.4 When you spoke to the accused did you give him an opportunity to answer when you first spoke to them?
A.4 Yes I asked them where they were going.
Q.5 Did you give Sgt Major Russell a chance to answer?
A.5 Not individually no, everything I said was addressed to both of them.
Q.6 How long did it take, was there any opportunity for them to give an explanation?
A.6 Oh yes, they both had an opportunity of making an explanation and when I told them to return the bikes to the lines and at the last when I said is that clear, they both had an opportunity then.
Q.7 You got an answer from Sgt Major Harris?
A.7 I got an acknowledgement from him, I am not sure if Russell said anything.
Q.8 How fast did you walk off, did you give them an opportunity to answer?
A.8 I did not walk off, just turned and strolled away at a normal pace.
Q.9 Here is a sketch of the area can you mark on there the place where you found the motorcycles? (Exhibit B)
A.9 The place marked with a red cross is the spot the witness indicated.
Q.10 How far is that from the corner?
A.10 About 10 yds.
Q.11 Where did the M.T. lines on Derwent rd extend?
A.11 Indicates point from A to B on Exhibit B.
Q.12 Are the motorcycles kept in any particular place?
A.12 Yes they are kept in a 15 yd area between the Bty office and the Men's mess.
Q.13 How far is it from A to B?
A.13 Between 125 and 150 yds.
Q.14 From B to Meade rd how far is that?
A.14 Approximately 30 to 50 yds.

Cross examined by the Defence

Q.15 When you arrived at the bus stop why did you decide to walk?
A.15 There was no decision made, we just decided to walk.
Q.16 What side of the street were you walking on?
A.16 The west side.
Q.17 What drew your attention as you were walking along?
A.17 A motorcycle engine coughed over.
Q.18 Will you describe that?
A.18 It is the effect you get from a cold motor, it fires once and then stops.
Q.19 Could you see the accused on the motor bike?
A.19 Yes, Russell was closest to me. I stopped beside him and bent over him to recognize him.
Q.20 What did you say to Sgt Major Russell?
A.20 Everything I said was addressed to both of them, I said Russell, I got no answer, Sgt Major Harris, he said yes sir. I said where are you going and Harris answered and said up.

on the hill, and I said take the bikes back you are both under arrest, I am not sure if Sgt Major Russell acknowledged it, but Sgt Major Harris said yes sir.
Q.21 Do you think Sgt Major Russell could have heard what you said?
A.21 Absolutely, I was closest to him.
Q.22 All the conversation passed between you and Sgt Major Harris?
A.22 Yes.
Q.23 You were a member of the 31st Bty?
A.2 Yes at that time.
Q.24 How long has Sgt Major Russell been with the Bty?
A.24 I am almost sure he had been with us three weeks.
Q.25 Do you think he had become familiar with the M.T. lines of the 31st Bty?
A.25 Yes.
Q.26 You asked for no work ticket, why not?
A.26 Because to an officer if they had any authority they would have offered it then, an explanation I mean.
Q.27 Why did you not take the number of the machine?
A.27 For the same reason.
Q.28 You did not think it was necessary?
A.28 No
Q.29 How long did this whole thing take from the time you first approached them?
A.29 Not more than five minutes.
Q.30 It might have been considerably less?
A.30 Not considerably no.
Q.31 Do you know if the bikes were returned to the M.T. Lines?
A.31 No.
Q.32 You did not inquire further?
A.32 No
Q.33 You found two Sgt Majors on bikes which you thought were being used improperly yet did not check the work tickets, did not bother to take the number, and did not check to see if they returned the bikes to the M.T. lines?
A.33 That is correct.
Q.34 Do you know if the machines were running?
A.34 They were not running when we were there.

Questioned by the court

Q.35 There was an attempt to start one, which one was it?
A.35 It was the Norton.
Q.36 Which one was Sgt Major Russell on?
A.36 The Harley.
Q.37 Was there a key on the Harley?
A.37 I don't know.
Q.38 Will a Harley run without a key?
A.38 Yes sir, providing the ignition is unlocked.
Q.39 Do the Sgts live over the men's mess?
A.39 Yes
Q.40 You cannot definitely state either of these bikes had been running?
A.40 No.

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Fifth Witness for the Prosecution

Lieut J.D. Hood, 23 Fd Regt SP RCA being duly sworn is examined by the Prosecution

Q.1 You are Lieut J.D. Hood 31st Bty 23 Fd Regt RCA?
A.1 I am
Q.2 Will you tell the court what you know concerning the accused in connection with the 24th of Dec 1943?
A.2 On the 24th of Dec walking along Mead Rd with Mr. Pinkerton we heard a motorcycle kick over and walked across the street

to investigate and discovered the accused together with Sgt Major Harris on a motorcycle. On questioning them where they were going Sgt Major Harris replied up on the top of the hill. Mr. Pinkerton informed them they were under arrest and ordered them to take the bike back to the lines.

Q.3 Did the accused have an opportunity to reply to Mr. Pinkerton's question?
A.3 Yes
Q.4 Was it addressed to him as well as Harris?
A.4 It was addressed to both of them.
Q.5 When Mr. Pinkerton ordered them to return the bikes to the lines was an opportunity given to them to reply then?
A.5 Yes
Q.6 Was the order given in such a way it might have been a joke?
A.6 No.
Q.7 Were these motorcycles Cdn Army machines?
A.7 Yes.
Q.8 Here is a rough sketch, Exhibit B, will you show on there where you found the machines?
A.8 The witness indicates the red cross on the sketch.
Q.9 How far is that from the corner?
A.9 Six or seven yards.
Q.10 Is it in or out of the MT lines?
A.10 It is out of the MT lines.
Q.11 How far?
A.11 10 or 15 yds.
Q.12 Were the machines on the pavement or on the sidewalk?
A.12 They were on the pavement.
Q.13 Do you remember if Sgt Major Russell gave a reply?
A.13 I did not hear him
Q.14 Did he have an opportunity?
A.14 Yes, when Mr. Pinkerton gave the order he could have replied.

Cross examined by the Defence

Q.15 When walking down the street what attracted your attention?
A.15 We heard a motor bike kick over.
Q.16 What do you mean by that?
A.16 When you kick the starter there is a splutter from the motor.
Q.17 When you went to investigate how far behind Mr. Pinkerton were you?
A.17 Within a yard.
Q.18 When you found Sgt Major Russell on the motor bike was the motor bike going?
A.18 No
Q.19 Do you know if it had been going?
A.19 No.
Q.20 Did Sgt Major Russell make any reply to anything that was said?
A.20 I don't recall him saying anything.
Q.21 Was the coversation between Mr. Pinkerton and Sgt Major Harris?
A.21 The greater part of it was.
Q.22 Why did you not ask Russell for his work ticket?
A.22 They were ordered to return the bikes and if they had one they would have produced it.
Q.23 You did not ask for one?
A.23 No
Q.24 Did you take the number of the machine?
A.24 No
Q.25 Why?
A.25 Did not consider it necessary.
Q.26 Did you check to see if the vehs had been returned to the lines?
A.26 No we did not.
Q.27 At that time you just walked on or away? How long do you think this whole business would take?
A.27 Two or three minutes
Q.28 Not very long?
A.28 Long enough to do what was necessary.
Q.29 Did you take any active part in this?
A.29 I took no active participation.

WOSY

Questioned by the court

Q.30 Did you see Sgt Major Russell riding the machine?
A.30 No I saw him sitting astride it
Q.31 Are you familiar with the MC lines?
A.31 Yes.
Q.32 How far is it from where they were found to the MC lines?
A.32 Just over 100 yds.

In the opinion of the court and the Judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Sixth Witness for the Prosecution

B 23570 L/Sgt Aston, 23 Fd Regt SP RCA being duly sworn is examined by the Prosecution.

Q.1 You are L/Sgt Aston, B 23570 31st Bty 23 FA Regt RCA?
A.1 Right sir.
Q.2 What was your duty on Dec 24th 1943?
A.2 31st Bty Tpt Sgt Sir.
Q.3 As such did you have authority to issue work tickets for motorcycles?
A.3 Yes sir.
Q.4 What authority was that?
A.4 That was from 31st Bty to R.H.Q., LAD and garage.
Q.5 Did you issue any such authority to the accused for the 24th?
A.5 No sir.
Q.6 Have you a motorcycle assigned to yourself?
A.6 Yes sir.
Q.7 What make of machine was it?
A.7 Harley sir.
Q.8 What is the number of it?
A.8 CC 42A365 sir.
Q.9 When did you put that veh away on the 24th?
A.9 I parked it in the MC lines approximately 1630 hrs.
Q.10 Were all the other machines there?
A.10 Yes sir.
Q.11 How many were there?
A.11 With my own it made six.
Q.12 Do you remember just how you parked your bike?
A.12 I parked it the second machine from the right hand side.
Q.13 When did you next see it?
A.13 At approximately 2330 hrs that night.
Q.14 What happened?
A.14 I checked the motorcycles and felt them and they were all cold.
Q.15 Was your machine where you had left it?
A.15 No sir, it had been moved.
Q.16 How far?
A.16 Approximately 10 ft facing at an angle.
Q.17 Was your bike locked?
A.17 It was sir.
Q.18 Were any other bikes locked?
A.18 Not to my knowledge sir.
Q.19 Are the Harleys equipped with keys?
A.19 No sir, I have one of my own.
Q.20 Do the Nortons have keys?
A.20 No sir, no way of locking a Norton.
Q.21 When locked will a Harley start?
A.21 No sir.
Q.22 A person would have no way of knowing it was locked until they tried to turn on the switch?
A.22 No.

Cross examined by the Defence

Q.23 How do you know your motorcycle had been moved?
A.23 I seen it.
Q.24 Did you check over the motorcycles at 2330 hrs to see if they had been running?
A.24 Yes sir, and I found the motors were cold.

Q.26 If they had been running how long would they take to cool?
A.26 That depends on how far they had run.
Q.27 If the bike ran from the corner of Mead and Derwent road to Darley road how long would it take to cool?
A.27 A short space like that it would be cold in half an hour.
Q.28 Did you check the work ticket against the speedometer?
A.28 No sir.

Questioned by the court

Q.29 Can you definitely say your machine was moved that night?
A.29 No sir, I just know it was moved out of the line up.

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b).

THE WITNESS WITHDRAWS

Seventh Witness for the Prosecution

S 23727 Gnr Freeman, A.H. 23 Fd Regt SP RCA being duly sworn is examined by the Prosecution

Q.1 You are Gnr Freeman, A.H. S 23727 31st Bty 23 Fd Regt SP RCA?
A.1 Yes sir.
Q.2 You were NT guard on the 24 Dec?
A.2 Yes sir.
Q.3 What was your tour of duty?
A.3 1700 to 2120 sir.
Q.4 What did you do during that time?
A.4 Patrolled the area sir, from Mead rd down Darley to Chesterfield rd and up Derwent rd.
Q.5 Is there any regular method of patrolling?
A.5 No sir.
Q.6 What is the longest time you would be away from your different points?
A.6 10 minutes sir.
Q.7 Did you notice anything unusually in the lines that night?
A.7 No sir.

Cross examined by the Defence

Q.8 While you were on guard on the 24th was any motorcycle moved from the lines?
A.8 Not to my knowledge sir.
Q.9 Did you see Sgt Major Russell with a machine?
A.9 No sir.
Q.10 At any time during that night could you see across the street?
A.10 No sir, it was pretty dark.

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

First Witness for the Defence

C 26127 RSM (W.O.II) Russell, R.D. Special Increment 23 Fd Regt SP RCA being duly sworn is examined by the Defence.

Q.1 How long have you been with the 31st Bty?
A.1 I am no sure whether it was the 11th or 12th I arrived with the 23rd.
Q.2 In what capacity are you with the Regt?
A.2 Attached to Special Increment sir.
Q.3 What duties have you been performing?
A.3 I took Sgt Major Harris's place for the shoot.
Q.4 Have you been assigned to a definite job?
A.4 No sir.

Q.5 This is Exhibit A were you familiar with that order?
A.5 No sir.
Q.6 Were you familiar with the MT lines and MT customs of the 31st Bty?
A.6 No sir, I was not.
Q.7 On the evening of the 24th of Dec would you tell me what happened before Mr. Pinkerton and Mr. Hood found you on the motorbike?
A.7 I left quarters to go to the canteen and from there to the 26 Bty Sgts Mess.
Q.8 Do you know where the 36 Bty Sgts mess is?
A.8 No sir.
Q.9 Were you being led there by Sgt Major Harris?
A.9 Yes sir, just before we got to Meads rd we came on two bikes sitting on their stands and Sgt Major Harris indentified them as belonging to the 31st Bty. I got on the Harley and Harris got on the Norton and we tried to start them to return them to the MT lines. I tried the switch and found it was locked. Sgt Major Harris kicked his bike over several times and all it would do was backfire. Just about a minute after two men came up and one leaned over the bike and said Sgt Major Russell, Sgt Major Harris and Harris said yes sir. He said where are you going and Harris said up on the hill. He said you both are under arrest, return the bikes to the lines. Harris said yes sir and we returned the bikes to the lines and went to our quarters.
Q.10 Did you recognize the person that came up to you?
A.10 No sir, it was quite dark and I was not very well acquainted with the personnel of the31st Bty.
Q.11 Tell me exactly in what position you found the motorcycles?
A.11 They were side by side the Norton on the stand and the Harley on the Jiffy stand.
Q.12 Were they on the road?
A.12 Yes sir.
Q.13 Did they question you about a work ticket?
A.13 No sir.
Q.14 Did you have a work ticket?
A.14 No sir.
Q.15 Did that person take the number of thebike?
A.15 No sir.
Q.16 How long was it from the time that person came up till he walked away?
A.16 It was just a minute or two sir.
Q.17 Why did you not tell him about finding the machines?
A.17 Because I did not have a chance sir, he was so hasty he put us under arrest and walked away.
Q.18 Were you rather amazed?
A.18 Yes sir I was.
Q.19 How did it register?
A.19 I thought this man is an officer, he recognized us on the motor bikes and I thought he would inquire what we were doing with them but he immediately put us under arrest and walked away.
Q.20 Did you have any intention of taking the motorcycle to the 26 Bty mess?
A.20 No sir.
Q.21 The following morning did you have any opportunity of talking with anyone about this?
A.21 Only with Sgt Major Harris.
Q.22 When you were brought before the Bty Comd and Comd Officer did you tell them the story you have told us here?
A.22 Yes sir.

Cross examined by the Prosecution

Q.23 You say you were going to the Canteen when you found these bikes?
A.23 Yes sir.
Q.24 Did you look at them yourself, was one assigned to you?
A.24 No sir.
Q.25 Where did you find them, how far from the bend in Derwent rd?
A.25 About thirty yards sir.

Q.26 Were they in the MT lines?
A.26 I don't know sir, I don't know where they are.
Q.27 Do you know where the MT lines are?
A.27 Yes sir, in front of the orderly room.
Q.28 Why did you not reply when you heard your name mentioned?
A.28 It was done in such a hurry I had not an opportunity.
Q.29 When did you find out you were under arrest?
A.29 The next day sir.
Q.30 What time?
A.30 Approximately 10 o'clock sir.
Q.31 How did it come about?
A.31 Sgt Major Rimmer told me I was relieved of my duties.
Q.32 Did you offer any explanation?
A.32 I don't remember that sir.
Q.33 You are under arrest forwhat, and make no objection?
A.33 He told me what it was sir
Q.34 Did you object?
A.34 No sir.
Q.35 Did you make any reply to this person who arrested you at the time?
A.35 I believe I did sir, but I don't remember very well what it was

Questioned by the court

Q.36 Have you been riding a Harley much?
A.36 No sir.
Q.37 Have you been riding a Norton much?
A.37 Yes sir.
Q.38 Have you ridden a Harley in England at all?
A.38 Yes sir.
Q.39 Did you have a key for the Harley Davidson?
A.39 No sir.
Q.40 Did you have a jeep key?
A.40 No sir.
Q.41 When you got on the Harley did you try to start it?
A.41 I tried to turn on the ignition but it was locked.
Q.42 Did you tell Sgt Major Harris you machine was locked?
A.42 Yes sir, he replied I can't get this thing going what do you think is the matter with it.
Q.43 While walking along the road did you see the guard on duty?
A.43 No sir, I did not.

In the opinion of the court and the judge advocate it is not necessary to comply withthe provisions of R.P. 83(b).

THE WITNESS WITHDRAWS

Closing address of the Prosecution

Sirs, the evidence has shown that the accused was found on a motorbike outside the M.T. lines and I say that constitutes taking and using. It is not alleged that the accused took it anywhere the onus is on him to show that he was not taking it anywhere. He discharges that onus by saying he found the bike there and leaves us the question of whether he is to be believed or not. We have no reason not to accept he did not say anything about finding the bike when accosted by the officer and when he was arrested he still said nothing. It is a question of whether he made up that story or not and that is a question for the court to decide. I feel it my duty to point out that it is entirely reasonable to assume that the accused together with his friend decided to use them and knowing the guard was walking back and forth they pushed them to where they were found. He found his machine locked and could not get it started and then they were discovered. The thing boils down as to whether the accused had and opportunity to explain that he found the motorcycles there.

Closing address by the Defence

Mr. President and Gentlemen, the evidence of the prosecution witnesses is not denied by the accused at all. There is no denial he was found on the bike and he himself admits he did not have a work ticket. However, the accused is charged with (The charge is read) There is no direct evidence that the bike was taken by the accused no one saw him take it and the MT guard said I did not see anyone in the M.T. lines. The only evidence that has been brought forward is that he was sitting on a bike and from that the inference may be drawn that he took the bike thus linking the accused with the charge. I would like to point out from the M.M.L. page at the top of the page (this is read). Now the accused has met the inference to be drawn from the evidence of the prosecution by saying he found the motorcycle, found it standing on the road and got on it intending to return it to the MO lines. Then someone came up and questioned them . Certainly the actions of Mr. Pinkerton did indicate haste, he placed to W.Os under arrest without bothering to find out if they had work tickets, without bothering to take the numbers of the machines and without bothering to see the machines returned to the lines. His actions do indicate haste, he says five minutes, Mr. Wood says two or three. There is a question of conflicting evidence, Lt Major Russell says it was two minutes. I think it is reasonable to assume his actions were hasty . As to the reason why he did not explain to Lt Major Rimmer who informed him, it is fairly simple, it was none of Rimmer's business. When a man is under arrest he is wise to keep quiet. He does not have to explain to every Tom, Dick or Harry. He did bring his story before the Bty Comd and the C.O. the proper places where they should have been brought. More than that any number of people could have taken this motorcycle, there are a considerable number of people in the Bty anyone of them who was capable of taking this machine. The court must satisfy itself beyond a reasonable doubt that the facts are consistent with the guilt of the accused, and the evidence that has been given is purely circumstantial.

Summing up by the Judge Advocate

Mr. President and Gentlemen, I agree with the Defending Officer when he says there is no direct evidence to the fact that the accused was seen riding on this particular motorcycle. I think it is well known that the average crime is committed under circumstances where spectators are not around. When a person commits a crime they don't do it in front of other people and I agree also that the evidence is circumstantial. I will also read from the M.M.L. page 81 para 42 (This is read).

The accused admitted being on this motorcycle on this night and his explanation is that he and another chap found these machine and then two officers came up and one of the officers entered into conversation with the friend of the accused. I think as reasonable men the conclusion you would come to is that the accused would produce his explanation at the time he was arrested by the officer. I am only throwing that out as opinion of mine, which opinion you are not bound to accept. I throw it out merely as a matter of guidance, but it does strike me as strange that no explanation was offered as to finding the bikes when the officer questioned them.

I don't think I need say anything more about the evidence but I will give you the law as to reasonable doubt. The court must remember the principle of English law that the accused is presumed to be innocent until he is proved to be guilty, and that the burden of proof rests upon the prosecution. Unless, therefore, the guilt of the accused has been established beyond reasonable doubt, the accused must be acquitted, as the prosecution has failed to sustain adequately the burden of proving his guilt. Such a doubt would be one that reasonable menwould have. It is more than mere suspicion. In other words the court must be satisfied not only that the circumstances proved were consistent with the guilt of the accused but also that they were inconsistent with any other rational conclusion.

Have you any further you wish me to say Mr. Defending Officer
No sir.
And you Mr. Prosecutor
No sir.

Exhibit 17

Certified True Copy of Extract Part I Regimental Orders
Order No 70 A/10 Oct 43

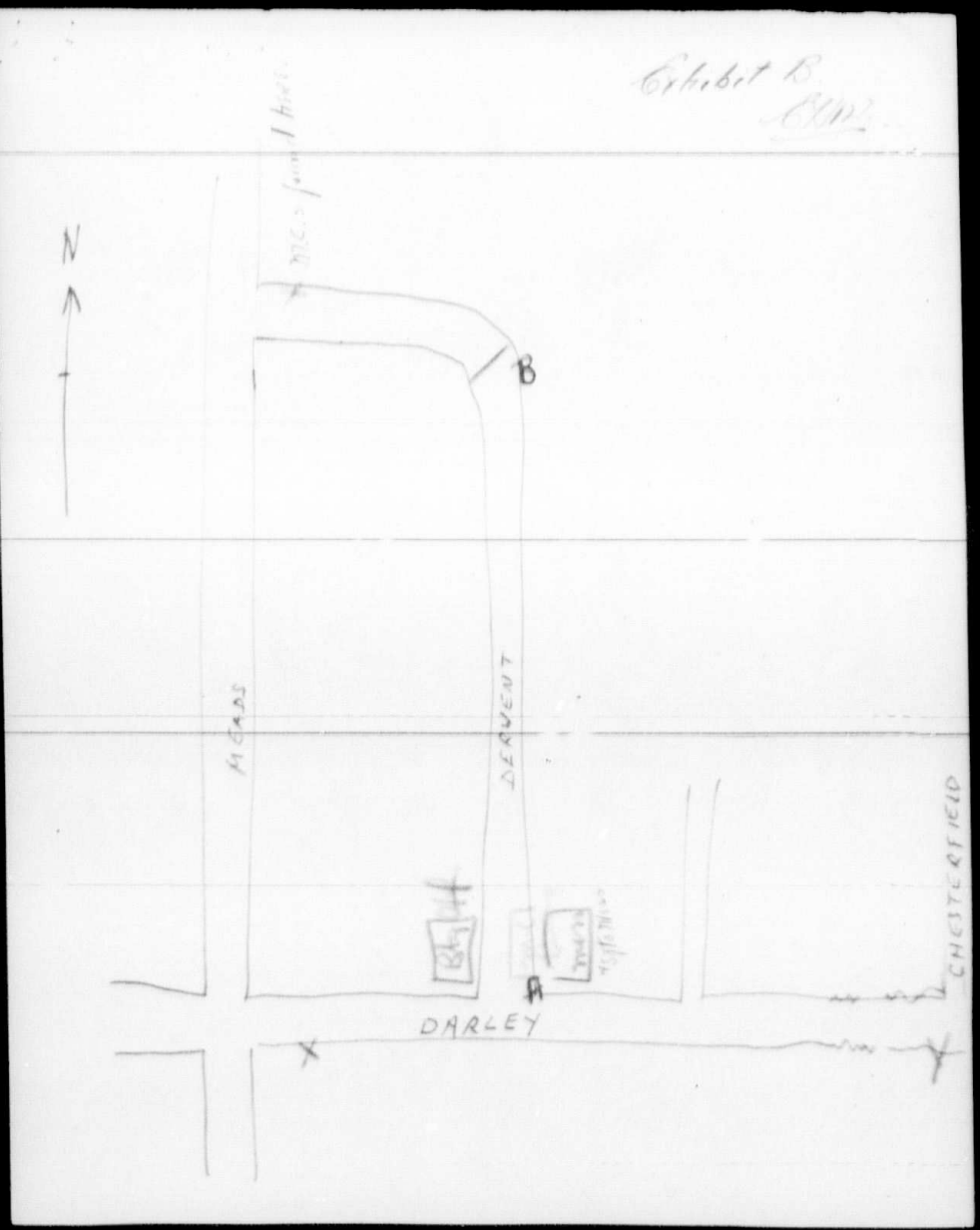
736. VEHICLES

It has come to the attention of the Commanding Officer that many unauthorised trips are being made by drivers of this Regt. In future RHQ vehicles will not move unless the trip is authorised by a work ticket signed by the C.O. 2 i.c. or Adjutant. Bty. vehicles will not move unless the trip is authorised by a work ticket signed by B.C., Bty. Capt. or C.P.O. Drivers will be checked regularly and if found to be on an unauthorised trip, they will be charged immediately and paraded before the Commanding Officer and will automatically be recommended for a Court Martial

Certified true copy from the Regt'l Books
in my custody

D.P. Aitkens
.....
(D.P. Aitkens) Lieut. RCA
A/Adjt., 23 Cdn Fd. Regt. CF. RCA

Exhibit B



SUMMARY OF EVIDENCE

in the case of

C/Warwick Major President

C-26327 WO. II Ray Douglas Russell, of the 31 Field Battery, SP, R.C.A., 23 Field Regiment, SP., R.C.A., a soldier of the Canadian Army placed on active service.

Charge-

Did use a W.D. vehicle and petrol for private purposes.

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

First Witness

Lieut. S.M.Pinkerton, 31 Field Battery, SP., R.C.A., 23 Field Regiment, SP., R.C.A., having been duly sworn, states:-

"I am a member of the 31 Field Battery, SP., R.C.A., 23 Field Regiment, SP., R.C.A. On 24 Dec 43, Mr. J. D. Hood and I were proceeding on foot towards the centre of town along Mead's road about 1900 hours. As we passed the end of Derwent Road we heard a motorcycle start and then stop. We crossed the road to investigate and I recognized Sergeant-major Harris and Sergeant-major Russell astride two machines. I said "Sergeant major Harris and Sergeant-major Russell." Sergeant-major Russell made no answer. Sergeant-major Harris said "Yes, Sir." Then I asked where they were going. Sergeant-major Harris said "to the top of the hill". And with that answer I felt no further questioning was needed and placed both under arrest and ordered them to return the bikes to the M.T. lines.

I did not ask them if they had a work ticket.

I do not know the number of the machines.

S.M. Pinkerton Lieut RCA

.....

Cross-examined by the accused Sergeant-major Russell.

Question What do the M.T. lines of the 31st Battery consist of?

Answer There are two M.T. lines. The truck lines and the motorcycle lines. The truck lines consist of the run from the road junction at Derwent and Meads roads and from Darley road and Meads road to the "T" junction at Chesterfield road and Darley road.

The M.C. lines is a 15 yard area between the Battery Office and the Men's Mess, at the junction of Darley road and Derwent road.

Second Witness

S.M. Pinkerton Lieut

Lieut. J. D. Hood, 31 Field Battery, SP., R.C.A., 23 Field Regiment, Sp., R.C.A., having been duly sworn, states:-

"I am a member of the 31 Field Battery, SP., R.C.A., 23 Field Regiment, SP., R.C.A. On the night of 24 Dec 43 at 1900 hours Mr. Pinkerton and I were walking along Mead's Road. Upon coming to the junction of Derwent Road, we heard a motor bike kick over and a horn blow. We went over to investigate and recognized Sergeant major Harris and Sergeant major Russell astride motorbikes. Mr. Pinkerton asked where they were going and Sergeant Major Harris replied "Up on the hill." Mr. Pinkerton placed them both under open arrest and ordered them to return the motorbikes to the lines. We did not ask for work tickets but assumed they would produce them if they had them. We did not notice the numbers of the motorbikes.

The accused declined to cross-examine.

H. Hood Lt RCA

.....

Question to the Accused:-

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

Answer by Accused -

I have nothing to say.

I certify that Rules of Procedure 4 (C), (D), (E) and (F) have been complied with.

Taken down by me in the presence of the accused at Eastbourne Sussex, this 26th Day of December, 1943.

J. M. Blain Lieut R.C.A.

(J. Blain), Lieut. RCA.,
23rd Field Regiment, SP, RCA.

ADDITIONAL SUMMARY OF EVIDENCE E.M. Warwick Major President

in the case of

C-26327 WO. II Ray Douglas Russell, of the 31 Field Battery, Sp,RCA., 23 Field Regiment, SP., RCA, a soldier of the Canadian Army placed on active service.

Charge-

Did use a W.D. vehicle and petrol for private purposes.

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

First Witness

Lieut. S.M. Pinkerton, 31 Field Battery, SP., R.C.A., 23 Field Regiment, SP., R.C.A., having been duly sworn, states:-

"The map of Eastbourne produced herewith and marked "A" is a reasonable map showing the 31 Battery area, and the rough sketch produced and marked "B" is a reasonable sketch showing Derwent Road in Meads, Eastbourne. Lieut. Pinkerton now marks in red the point "X" on the said sketch "B" the place in which he found the accused on the evening of 24 Dec 43 in question. He also marks the points "Y - Z" showing the extent of the 31 Battery M.T. lines on Derwent Road, and also marks the square "M.C." showing the battery M.C. lines.

In reply to questions by Lieut. Cameron, Mr. Pinkerton also states:-

"I found the accused astride the M.C's definitely outside the battery M.T. lines, i.e. about fifty yards from the M.T. lines and about 175 - 200 outside the battery motorcycle lines. The motorcycles are never kept in any other place in the M.T. lines other than the M.C. lines which I have indicated on the sketch marked "B". The motorcycles astride of which I found the accused were Canadian Army motorcycles, one was a Harley-Davidson and one was a Norton. No authority for taking or using the M.C's was produced to me by the accused, none being asked for by me. On my order to the accused to return the motorcycle to the M.T. lines the accused Sergeant-Major Harris replied "yes sir". I do not remember receiving any reply from Sergeant-Major Russell.

The accused declines to cross-examine.

S.M. Pinkerton Lieut.
.....

Second Witness

Capt. N. Stavert, 31 Field Battery, SP., R.C.A., 23 Field Regiment, SP., R.C.A., having been duly sworn states:-

"I recognize the certified extract from Regimental Daily Orders now produced and marked "C" hereto. In this battery on 24 Dec 43, the senior M.T. sergeant had verbal authority to issue work tickets for vehicles and M.C's for the sole purpose of proceeding from the battery M.T. lines to the L.A.D. lines for repairs. The M.T. sergeant so authorized on 24 Dec 43 was L/Sgt. Aston, R.H.L. B-23570. I personally did not authorize the taking or use of any motorcycle for 24 Dec 43. As far as Derwent Road is concerned, the battery M.T. lines extend from Darley up the East side of Derwent as far as the place where Derwent Road turns WEST. The area "Y - Z" outlines in red on the rough sketch is now produced and marked "B" indicates reasonably accurately the extent of the 31 Battery M.T. lines on Derwent Road which is an area about 125 - 150 yds in length. There are no battery M.T. lines on Meads

(Statement of Capt N. Stavert Continued)

Road shown on the said sketch. The junction of Derwent and Meads Road is about fifty yards from the nearest 31 battery M.T. lines. On 24 Dec 43 it was the definite practice to keep the battery M.C's in an area on Derwent Road within twenty five yards from Darley Road, and in no other place. Personnel of this battery live on Derwent Road where it runs approximately North and South. No battery personnel live on Derwent Road where it runs approximately East and West. I was on 24 Dec 43, and still am battery captain of the 31 Battery, 23 Field Regiment SP., R.C.A.

The accused declines to cross-examine the witness.

W Stavert

Third Witness

Lieut. J.D. Hood, 31 Field Battery, SP., R.C.A., 23 Field Regiment SP., R.C.A. having been duly sworn states:-

"When Lieut. Pinkerton and myself came upon the accused on motorcycles on 24 Dec 43 at the time in question the motorcycles were side by side on the right hand side of Derwent Road pointing towards Meads Road. They were about five yards from the junction of Derwent and Meads Roads. The motorcycle on which the accused was astride was a Canadian Army Motorcycle. When Mr. Pinkerton ordered the accused to return the motorcycle to the lines, the accused Sergeant-Major Harris replied: "Yes Sir". I do not remember Sergeant-Major Russell saying anything in reply to that order.

The accused declines to cross-examine.

John D Hood

Fourth Witness

Major F.A. Robertson, 31 Field Battery, SP., RCA., 23 Field Regiment, SP., RCA., having been duly sworn states:

I was on 24 Dec 43 and still am the Battery Commander of the 31 Battery, 23 Field Regiment, SP., R.C.A. I did not at any time authorize the taking or use of any motorcycle for 24 Dec 43.

The accused declines to cross-examine

F.A. Robertson Maj

.....

Fifth Witness

Gnr. Freeman, A.R., B-23727, 31 Field Battery, SP., RCA., 23 Field Regiment, SP., R.C.A. having been duly sworn states:-

I was M.T. guard for the 31 battery on 24 Dec 43 from 1700 hrs to 2120 hours. During this time I patrolled the beat on Darley Road from Meads Road to Chesterfield Road and up Derwent Road to the turn in the road where the end of the vehicles are. There is no regular method of patrolling this beat, but there would never be an interval greater than ten minutes at the outside between the times I was in or passing by the junction of Derwent and Darley Roads. I did not notice anything unusual or contrary to regulations in the M.T. lines during my tour of duty aforesaid.

The accused declines to cross examine

A.R. Freeman

.....

Question to the accused by Lieut. Cameron

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

Answer by the accused

I have nothing to say.

I certify that Rules of Procedure 4 (C), (D), (E), and (F) have been complied with

Taken down by me in the presence of the accused at Eastbourne, Sussex, this tenth day of January 1944

(W.H.Q. Cameron) Lieut. RCA.
23rd Field Regt. SP., RCA.

Certified True Copy of Extract Part I Regimental Orders
Order No 70 d/10 Oct 43

336. VEHICLES

It has come to the attention of the Commanding Officer that many unauthorized trips are being made by drivers of this Regt. In future RHQ vehicles will not move unless the trip is authorized by a work ticket signed by the C.O. 2 i.c. or Adjutant. Bty. vehicles will not move unless the trip is authorized by a work ticket signed by B.C., Bty. Capt. or C.P.O. Drivers will be checked regularly and if found to be on an unauthorized trip, they will be charged immediately and paraded before the Commanding Officer and will automatically be remanded for a Court Martial

Certified true copy from the Regt'l Books
in my custody

D.P. Atkens.....
(D.P. Atkens) Lieut. RCA
A/Adjt., 23 Cdn Fd. Regt. SP. RCA

23 Cdn Fd Regt SP RCA.

0-00-143

SGT - RUSSELL - WA

48 files

RECORD AT CMHQ IN AB 160 000-142

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig J D B Smith, OBE Comd 5 Cdn Armd Bde dated 16 May 44

ACCUSED.

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

Number	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname	Unit.
K.1147	Sgt	William Albert	RUSSELL	9 Cdn Armd Regt

PROCEEDINGS REVIEWED

J C Campbell Lt
20 Jun 44

REVIEWING OFFICER'S BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) on (date(s)) 16 May 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

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

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

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

A3. The Court is opened. The accused is (are) brought before the Court. At 1525B hours trial commences.

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

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

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

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

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

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

Ans No (2)

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

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

President	Maj	I F DOUGLAS	WESTMR R (Mot)
Member	Capt	R.G. Grimes	2 Cdn Armd Regt
Member	Lieut	G.C. Pitt	5 Cdn Armd Regt
Judge-Advocate			
Prosecutor	Lieut	J.R. Jewell	9 Cdn Armd Regt
Defending Offr	Lieut	R.B. Ballantyne	4 Bn 2 CIBRD CASF

Questions by President: Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 21.)

A8. The accused K.1147 Sgt William Albert RUSSELL 9 Cdn Armd Regt before arraignment make(s) (no) (~~a~~) plea (1)

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

President to accused : Do you wish to make a statement ? Ans. No.....(5)
(*I. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

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

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

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

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

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

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

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

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

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

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans. No.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 355 & AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

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

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

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

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

Accused: K 1147 Sgt William Albert Russell 9th Armd Regt (BCD)

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

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

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

Time in confinement awaiting present trial—a total of 181 days, of which 91½ days were spent in hospital. (1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
To be reduced to the rank of trooper

(Sgd) ..... Judge-Advocate, if any. 16 May 44 Date awarded. (Sgd) W. Douglas major President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

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

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

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

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

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

I confirm the finding and sentence.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)
(1. AA 57A. Delete if not used.)

(Sgd) W.B. Jones Brig

Date 18 May 44 Commanding 5 Cdn Armd Bde Confirming Officer.

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

Accused.	Date.	Signature of Offr.
K 1147 Lt Russell WA	22 May 44	Jr Ridgley Capt RCASC.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FOR PROSECUTION

LIST OF WITNESSES

1 - Lt W I Stanton — 9 Cdn Armd Regt (SCD) C A
2 - A/Capt L Macdonald — do

FOR DEFENCE

Nil

I desire the convening officer to detail an officer to represent me at my forthcoming trial by Field General Court Martial.
I desire the services of Lt J C McKinnon, 9 Cdn Armd Regt (BCD) if he is available.

In the field
14 May 44

(W A Russell) Sgt
9 Cdn Armd Regt(BCD) C A

I acknowledge that I have this day received one copy of the Charge Sheet and one copy of the Summary of Evidence in my case

In the Field
Date - 15 May

(W A Russell) Sgt
9 CIN ARMD REGT (SD) C A

CHARGE SHEET

The accused K 1147 Sergeant William Albert RUSSELL, 9 Cdn Armd Regt(SCD) C A, a soldier of the Canadian Army Overseas, is charged with

FIRST CHARGE
A A Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field did absent himself without leave from 1800B hrs 28 April 44 until surrendering himself to military police at Naples at 1715B hrs 4 May 44

(absent 5 days 23 hrs 15 mins)

In the Field
14 May 44

(F A Vokes) Lt-col Comd
9 Cdn Armd Regt (SCD) C A

To be tried by Field General Court Martial.

(C D B Smith) Brig
Comd 5 Cdn Armd Bde

In the Fd
16 May 44

FIELD GENERAL COURT-MARTIAL

CFAAG (To Rev of AFAB) 460/FAB/1097 (2nd/3)

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K.1147	Sgt	-	William Albert	RUSSELL	9 Cdn Armd Regt

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 16 May 44 endorsed by me, ~~(or by an offr of my staff (or me))~~," To be tried by Field General Court-Martial ".

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

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

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

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

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

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

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

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	I F DOUGLAS	WESTMR R (Mot)

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	(to be detailed)	2 Cdn Armd Regt
Lt	(to be detailed)	5 Cdn Armd Regt

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	(to be detailed)	9 Cdn Armd Regt

JUDGE-ADVOCATE.

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

On Active Service in the Fd

in Italy (*Country.*)

(J D B Smith) (*Signed personally. RP 105 fn 2.*) Brig (*Rank.*)

Date 16 May 44 Commanding 5 Cdn Armd Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

I certify that I have this morning examined K 1147 Sgt Russell W A, 9 Cdn Armd Regt(RCD) C A and in my opinion he is fit to undergo trial by Field General Court Martial

In the Field
Date - 16 May 44

(F G Mobie) Capt RCAMC
9 CDN ARMD REGT (RCD) C A

The Defending officers address re statement of good conduct and mitigation of sentence

Mr President I wish to point out to the court on accused's behalf that while circumstances do not excuse [illegible] his actions never the less Lt Cmdr was mainly responsible for his action he has served 2 years 11 mos in the Can Army with the 9 CAR (SCH) he has been awarded C.d.S.M. and clasp for voluntary service and good conduct The accused wishes me to point out very strongly that he would like to go to the front with his regiment and I would ask the court to find a sentence which would grant accused his wish

Maj Eastgate

CERTIFICATE UNDER ARMY ACT SECTION 163 (1) (j)

I, Captain H.E. HOBBS Commanding 111 PROVOST COMPANY, C. M. POLICE.

certify that No K.1147 Rank SGT. Name RUSSELL W.A.

of the BRITISH COLUMBIA DRAGOONS surrendered himself to

No1115084 Rank L/CPL. Name HUGHES K.

of the 246 PROVOST COMPANY, attached 111 PROVOST COMPANY, C.M.POLICE at NAPLES

at hrs., 1715 on the 4th day of MAY 1944.

as a deserter (or absentee without leave).

Date 4th MAY 1944.

Capt.

O. C. 111 Provost Coy C. M. P.

Commanding Officer of the person or portion of His Majesty's Forces to whom the Surrender was made

Exhibit A

Summary of evidence in the case of K 1147, Sgt William Albert RUSSELL, 9th Cdn Armd Regt (BCD), Cdn Army Overseas, charged with absence without leave from 1800 hrs 28 Apr 44 to 1715 hrs 4 May 44.

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

FIRST WITNESS

Lieut W.I. Stanton, "B" Ech, 9th Cdn Armd Regt (BCD) C A, sworn, states:

On 28 Apr 44 I was in charge of a party from "B" Ech, 9 Cdn Armd Regt (BCD). The party went to Caserta for the day on recreational tpt. At about 1755 hrs, that is five minutes before the vehs were due to leave for camp, Sgt Russell, the accused, came up to me and reported that the "B" Ech party were all present and correct. At the time I was checking the "A" Ech party and I told him it was time to mount the vehs. I completed my check and the vehs left about 1800 hrs. About 1900 hrs when we reached camp I noticed that the accused was not there and I accordingly reported him to the O C "B" Ech as AWL. Accused was supposed to to return to unit lines with the trucks and was not authorized he had no permission to remain in CASERTA /after 1800 hrs.

Cross Examined by the accused:

Q. Sir, when I reported to you at the vehs at Caserta at 1755 hrs would you say that I was under the influence of alcoholic stimulants ?

A. You might have been drinking but in my opinion you were not drunk.

(W I Stanton) Lieut

SECOND WITNESS

Capt L. Macdonald, Adjutant, 9th Cdn Armd Regt (BCD) C A, sworn, states:

I am Adjutant of 9th Cdn Armd Regt (BCD) C A and have custody of Regtl documents. I have in my custody and now produce a Certificate Under Army Act Section 163 (1)(j) which was received from 111 Pro Coy, CMP, which shows that the accused surrendered himself as an absentee without leave to 246 Pro Coy att 111 Pro Coy, CMP, at Naples at 1715 hrs 4 May 44

The accused declines to cross examine this witness.

(L Macdonald) Capt

" The Certificate referred to by the witness, produced, read over to the accused, marked Exhibit A, signed by me , and attached hereto."

(G E Eastman) Major
Officer Taking Summary

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

The accused: I desire to make an unsworn statement.

The accused, K 1147, Sgt William Albert Russell, 9th Cdn

Armd Regt (BCD) C A, states:

On the morning of 28 Apr 44 I was given permission from O C "B" Ech, to join a party going to Caserta on Recreational Tpt. I was warned that I had to return to the veh at 1755 hrs the same day. I returned to the veh at that time, checked the personnel of "B" Ech and reported to Lieut Stanton, the witness, that all personnel were present. I did not return with the veh myself. At approx 1630 hrs 4 May 44 I surrendered myself to 111 Pro Coy, Naples, as AWL and was detained by them .

O. Russell
(Signature of Accused)

The accused declined to call witnesses in his own behalf.

I certify that RP 4 has been complied with.

Taken by me in the field in the presence and hearing of the accused this 12th day of May , 1944.

G. E. Eastman
(G E Eastman) Major
Officer Taking Summary.

Exhibit C

No. K 1147 Name RUSSELL W A Sqn., Battery, or Company

Corps 1104/1

Date of enlistment 21-7-41 G.C. Badges

Service or Proficiency Pay

M.F.M. 6 (A.F. B.122) 40/P&C/6136 (2965)

#0

Date of last entry in Company Conduct Sheet

No. and date of last drunk

Period not reckoning towards freedom from extra fine

Sheet No. 2 /

Signature O.C. Company, etc. I S Secord Maj

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks

CERTIFIED TRUE COPY OF REGT BOOKS
IN MY CUSTODY

L Macdonald Capt
(L Macdonald) Capt & Adjt

(P.T.O.)

Exhibit B

ARMY FORM B 296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
K 1147	SGT	RUSSELL William Albert	9 CDN ARMD REGT(RCD)

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

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

The conduct sheet(s) mentioned should be produced in court with this statement and annexed to the proceedings.

† See para. 677, K.R., 1940.

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

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

	* Within last 12 months.	*Since Enlistment.
For	times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct.

or

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

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

Previous convictions (if any) are by court martial or civil court, sentences and dates, and sentences of No. 1 to be annexed to this statement.

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

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

5. The present age of the accused according to his record of service is 30 yrs 1 month

6. The date of his enlistment attestation specified in his record of service is 21 JUL 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs. 10 mos.

8. The accused is entitled to deferred pay or gratuity in respect of 2 yrs. 10 mos. service.

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

10. The accused is in possession of, or entitled to, no military decoration or military award, or is in possession of (*state any military decoration or reward*) Cdn VSM & Clasp

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

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

(*16648) WL20848/965 75,000 12/40 A.S.K.W.Ltd. Gp.A88

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

No. K 1147 Rank Sergeant Name RUSSELL W A of 9 Can Armd Regiment (or as the case may be).

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

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

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

Signed this 14th day of May 44

L Macdonald Capt & Adjt

(L Macdonald) Capt & Adjt

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

In the rank of Date of Promotion.

In the rank of years.

In the rank of years

In the rank of years.

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

WWW-61

Pte Russell WV

RECEIVED 25 SEP 1944 JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AFA3) 40/P & S 1608 (2804)

Convened by Order of Colonel H.B. Tomer A/Comd "B" Gp CRU dated 29 Aug 44

ACCUSED.

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

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
F-61706	Pte	Wilfred Vernon	RUSSELL	1 Cdn Para Trg Coy

PROCEEDINGS REVIEWED.
J. Rudiguked Capt.
25 Sept 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) England on (*date*) 30 AUG 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

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

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

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

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1230 hours trial commences.

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

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

A5. President to accused: ~~Do you object to~~ P 38776 SGT SHULTZ A.F. as interpreter? Ans ~~_____~~

~~The Interpreter is sworn.(1)~~ ~~Do you object to~~ as shorthand writer? Ans NO SIR.
The shorthand writer is sworn.(1)

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

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

Ans NO SIR.(2)

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

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

President	Lt-Col	D.L. Redman VD	HQ CRU
Member	CAPT	C.E. LAFOND	1 C G R U
Member	LT	J.R. SHAW	1 CDN PARA TRG COY
~~Judge-Advocate~~			
Prosecutor	LT	F.W. COOPE	1 CDN PARA TRG COY
Defending Offr	LT	R.J. MITCHELL	1 CDN PARA TRG COY

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 33.)

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

President to accused : Do you wish to make a statement ? Ans. NO - SIR .....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose sheets of Record.

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

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

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).)

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

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 80(C), 114, 115.)

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

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

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

Are they witnesses as to character only ? Ans. .....
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

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

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

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO - SIR
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. AFB 255 or AFB 295. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

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

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

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2) 7.7.5
(1. When several accused tried separately see RP 200. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RD 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

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

Accused: F-51706 Pte Wilfred Vernon RUSSELL 1 Cdn Para Trg Coy

Charge. ("insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.A.9(2)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

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

N ~~At present under sentence~~ for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which NIL days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of Ninety (90) days.

(Sgd) ..... Judge-Advocate, if any. Date awarded: 30 Aug/44 (Sgd) [signature] President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

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

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

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

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

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

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (*)
(*. AA 57A. Delete if not used.)

(Sgd) [signature]

Date 2 Sep 44 Commanding "B" Sqn Cdn Base Recruit Depot Confirming Officer.

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

Accused. F-51706 Pte Russell W. Date. 8 Sep 44. Signature of Offr.

Promulgated. Extract Part II D.O. No. 86 dated 8 Sep 44

[signature] Lt Adjt 1 Cdn Para Trg Coy

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CHARGE SHEET

The accused F-61706 Pte Wilfred Vernon RUSSELL, 1 Cdn Para Comp Coy., Canadian Army Overseas, a soldier of the Canadian Army Overseas placed on Active Service is charged with:

CHARGE
AA 9 (2) WHILE ON ACTIVE SERVICE DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

in that he

In the field on 15 Aug 44 when ordered to draw a parachute in preparation for a balloon descent did not do so.

by Lt A.G. Meen

J.R. Madden
(J.R. Madden) Lieutenant
Commanding
1 Cdn Para Comp Coy
Cdn Army Overseas

Field
29 Aug 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

H.R. Tyner
(H.R. Tyner) Colonel
(H.R. Shields) Brig
A/ Comd 1st Cdn Gp
Cdn Rft Units

Field
29 Aug 44

FIELD GENERAL COURT-MARTIAL

CPA35 (In lieu of AFA31) 40/PAS/1697 (2863)

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

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-51706	Pte		Wilfred Vernon	RUSSELL	1 Cdn Para Trg Coy

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 29 Aug 44 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ",

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

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder. 1427

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

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

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Col	D.J. Redman, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by	1 C/CRU
Lieutenant	to be detailed by	1 Cdn Para Trg Coy

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieutenant	to be detailed by	1 C/CRU

JUDGE-ADVOCATE.

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

On Active Service in the Fd

in England (Country.)

H R Turner (Signed personally. RP 105 fn 2) Col (Rank.)

Date 29 Aug 44

Commanding
(H.R. Turner) Colonel Convening Officer.
A/Cond "G" Gp CRU

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

NO 1 CANADIAN GENERAL REINFORCEMENT UNIT
CANADIAN ARMY OVERSEAS

Medical Officer's Certificate
K.R.(Can) para 557.

I certify that I have this day examined,

No. F.51706 Rank Pte. Name RUSSELL, Wilfred Vernon

and in my opinion is ~~Unfit~~ Fit to undergo trial by Court Martial.

Field
Date: 30 Aug 44

Medical Officer

F.G.C.M. IN THE CASE OF

F 51706 Pte RUSSELL, W.V., 1 Cdn Para Trg Coy

30 Aug 1944

EVIDENCE AS TO CHARACTER NOTE E-1

1st WITNESS AS TO CHARACTER

Lt G.A. MEEN, on strength No 1 Cdn Para Trg Coy, having been duly sworn states:

I have known the accused for some months and throughout that time he has been an efficient and reliable soldier. I have been impressed by his ability and willingness to carry out his orders promptly and to the best of his ability.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

STATEMENT BY THE ACCUSED NOTE E-3

Sir,

I qualified as a paratrooper in Canada and then came to England and found out that I had to go on a conversion course. I went along with the detachment to Ringway, we had an instructor there who told us that if we had any doubts about being paratprs while we were at Ringway was the place to find out and if we wanted to drop out then was the time to do it. This officer was F/L Denzey of the RAF who was in charge of us. I do not think this statement had any effect on my decision to quit the paratps, I was not much afraid to jump from planes and I did not feel anything about a balloon until I saw the balloon and then I got scared and did not want to, I did not draw the parachute when told to and was placed under arrest.

PLEA IN MITIGATION NOTE E-3

Sir,

Russel is 21 years of age. He joined the army on the 3 Dec 42, and spent six months of that time in an armd unit. He volunteered for the paratps and was a qualified paratpr, while on this course and under the instruction of an RAF instructor he heard this statement about getting out and when he saw the balloon he decided it was a good time to quit. I am not bringing up the RAF officer's statement as evidence in def but merely in mitigation of his punishment, that I hope the Court will see fit to consider when sentencing him. This man has done his best and will do so when he gets into some other service, I am sure of that he will be a credit to whatever service that will be. He was able to jump from planes, but there is a difference between that and jumping from a balloon where the chute is not opened for 180 feet. I ask the Court to make this Man's punishment as light as possible to enable him to be out and doing the good service that he is capable of as soon as possible.

SUMMARY OF EVIDENCE

In the case of

F-81706 Pte Wilfred Vernon RUSSELL, 1st Cdn Para Trg Coy CASC, a soldier of the Canadian Army Overseas placed on Active Service.

WHEN ON ACTIVE SERVICE disobeying a lawful command given by his superior officer, in that he in the field on 15 Aug 44 refused to draw a parachute in preparation for a balloon descent when ordered to do so by Lieut J.A. Meen.

THE COMMANDING OFFICER DIRECTS THAT THE EVIDENCE BE TAKEN ON OATH.

FIRST WITNESS Lieut J.A. Meen, 1 Cdn Para Trg Coy CAO.

I certify that owing to the exigencies of the service (witness in hospital) the attendance of this witness cannot readily be procured today. A statement purporting to be signed by him has been read to the accused and is attached to this cross-examination here today.

Statement marked "A" attached.

(W.B. Howard) Lieut 1 Cdn Para Trg Coy

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

Answer by the accused:- I do not wish to give evidence or to make a statement at this time.

I certify that rules of procedure 7 (C), (D), (E) and (F) have been complied with. Taken down by me in the presence of the accused at Canter Barracks, Bulford Camp this 20th day of August 1944.

(W.B. Howard) Lieut.,
1 Cdn Para Trg Coy
CAO Army Overseas.

EXH

EXHIBIT

Lieut J.A. Mean, 1 Can Para Trg Coy CAO, having been duly sworn states: On 15 Aug 44, while attending a parachute conversion course at Ringway, England I was in charge of a group of other ranks who were also attending the same course. At approximately 2030 hrs 15 Aug 44 the class was ordered to draw parachutes for a descent from the balloon. I was informed that Pte Russell, W.V. refused to draw a parachute. I spoke to Pte Russell, W.V. and said: "Pte Russell draw a parachute." He answered "No, sir." I repeated the order twice more to make sure that it was understood and also explained to Pte Russell, W.V. that his refusal would mean that he would be placed on charge. I received the same reply as before. Then Pte Russell, W.V. was placed under close arrest by F/Lt Denney, RAF Station, Ringway and under A/Sgt Gough J.C. he was paraded to the guard room.

(J.A. Mean) Lieut, 1 Can Para Trg Coy

Sworn before me at Tidworth Military Hospital 20 Aug 1944.

(W.B. Howard) Lieut, 1 Can Para Trg Coy

In Lieu of Army Form B296 (War)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For use at Trials by Field General Courts-Martials Only)

Number.	Rank.	Name	Regiment (or as the case may be
[illegible]	Rfn	MILLmad Mamon Russell	1 Cdn Para Trg Coy

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

X- Strike out if not applicable.

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

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

For AWL Nil ..... times

For ..... N/A ..... times

For ..... N/A ..... times

For ..... N/A ..... times

Date of first entry in Field Conduct Sheet 10/6/44.

Date of last entry in Field Conduct Sheet 10/6/44.

2. ~~Previous convictions of the accused by a court martial or a civil court, if any, set out in the schedule overleaf.~~

3. ~~The accused at the present time under sentence for ..... awarded by .....~~

4. The accused has been awaiting trial on the present charges for nil days in civil custody and for 15 days in military custody, i.e. nil days in open arrest, 15 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 21 Yrs 1 Mon.

~~The date of his calling up for military service is.....~~

Attestation

6. The date of his ~~calling up~~ for military service is 20 Dec 1943.

7. ~~The service which the accused is allowed to reckon is.....~~

8. The accused is in possession of

9. ~~(If the accused is a warrant officer or NCO) The accused has served continuously without reduction, to the present date,~~

~~date of promotion.....~~
~~in the substantive rank of.....~~
~~in the war substantive rank of.....~~
~~in the acting rank of.....~~

Ex 16
MM

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

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

Signed this ~~31~~ 30 day of Aug 1944

G.E. Cleroux Lt.
(G.E. Cleroux) Lieut
Adjutant 1 Cdn Para Trg Coy.

No. F-51706 Rank Pte Name RUSSELL Wilfred Vernon

Sqn, Battery, or Company: nil

Corps: A-35 C Para TC — Period not reckoning towards freedom from extra fine: 1 Cdn Para Trg Coy CAO

Date of Enlistment: 30 Dec 42

OC Signature OC Company, etc: nil

Sheet No: two

Service Proficiency Pay: T.Brier Capt

Character:

3/17 MFM 6 (AFB 122) 40/P&S/130(5415)

Date of last entry in Company Conduct Sheet:

No. and date of last drunk:

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award of or order (date-stamp with title)	By whom awarded	Remarks
				ORIGINAL SHEET DESTROYED 30 Jun 43 "TWRE"					
Shilo Camp Manitoba	10 Jul 44	Pte		AWL from 0600hrs 10 Jul 44 to 1415 hrs 10 Jul 44 (8hrs 15mins)	Documentary	Summ forf 5 days pay	11 Jul44	Major D.H. Taylor	Auto forf 1 days pay (FR&I 149)

certified true copy .....
(W.B.Howard) Lieut
1 Cdn Para Trg Coy
Cdn Army Overseas

OPTH

I, F-81706 Pte Russell, W.V. 1 Cdn Para Trg Coy., Canadian Army Overseas, desire to have an officer defend me at my trial by court martial.

I desire the services of Lt R.J. Mitchell, if he is available.

21 Aug 44. Signed. W.V. Russell
W.V. Russell

LIST OF EXHIBITS

Exhibit "A"

Statement purporting to be signed by Lt C.A. Meen, 1 Cdn Para Trg Coy, Cdn Army Overseas and referring to the accused and dated 20 Aug 44.

C. A. C. F. – 1 – 60

Ft. Russell, Ill.

RECORDED AT CMHQ IN AB 150

CAOF 1-60

CFASC (In lieu of AFA51)
40/F & B/1008 (6144)
4/38B

FIELD GENERAL COURT-MARTIAL

Convened By Order of Brigadier W. J. Megill Comd 5/4 Cdn Inf Bde dated 15th May 42

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 107. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or a/Apptmt.	Full Christian Names.	Surname.	Unit.
B.163691	Pte.		William	Russell	S/SD&G Highrs (CAOF)

PROCEEDINGS REVIEWED

5 Recds h & Bnd. (h)

REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) U.K. at Witley on (date(s)) 15 May 42

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

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

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

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

A3. The Court is opened. The accused is (are) brought before the Court. At 1010 hours trial commences.

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

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

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

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

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

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

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

Ans N/A (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(6). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

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

President	Major	J. E. Pickard	3/HLI of C (CAOF)
Member	Capt	H. A. Staples	3/Nova Scotia Highrs (CAOF)
Member	Lt.	P. F. Metcalfe	3/HLI of C (CAOF)
Judge-Advocate			
Prosecutor	Lt.	H. R. Nicholson	3/SD&G Highrs (CAOF)
Defending Offr	Lt.	F. A. Burns	3/SD&G Highrs (CAOF)

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

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

A8. The accused B.163691 Pte. William Russell before arraignment make(s) (no) (a) plea (1)

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

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CA OF A 1

RECORDED AT CMHQ IN AB 168 C.A.O.F. 1-60

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA31)
40. P & R/1008 (6144)
4/38B

Convened by Order of Brigadier W. J. Megill Comd 3/4 Can Inf Bde (CAOF) dated 15 Nov 42

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.163691	Pte.		William	Russell	3/SDTC. Highrs. (CAOF)

5 Recds & 3 Bnd. Mss

REVIEWING OFFICER, JAG BRANCH, C.M.H.Q. REVIEWED

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) U.K. on (date(s)) 15 Nov 42

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs, under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A96, for paths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1010 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. ~~President to accused: Do you object to~~ ~~as interpreter ? Ans~~

The Interpreter is sworn.(1) ~~Do you object to~~ as ~~shorthand writer ? Ans~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans Nil (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs, under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J. E. Pickard	S/HLI of C (CAOF)
Member	Capt.	H. A. Staples	S/M. N.S. Highrs (CAOF)
Member	Lt.	P. V. Metcalfe	S/HLI of C (CAOF)
Judge-Advocate			
Prosecutor	Lt.	H. R. Nicholson	S/SDTC Highrs (CAOF)
Defending Offr	Lt.	F. A. Burns	S/SDTC Highrs (CAOF)

Questions by President: Is the Prosecutor a lawyer ? Ans NO. Is the Defending Offr a lawyer ? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused B.163691 Pte. William Russell before arraignment makes(s) (no) (a) plea (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(1) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

C.A.O.F. 2 & 3

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP 37(A).*)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans.....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 1 (2) charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s) and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans YES
Do you intend to call witnesses on your behalf ?
Ans NO. Are they witnesses as to character only ? Ans N/A
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 1 (2) charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s)(1) as to Character and Particulars of Service(2), and certified true copy (copies) of Conduct Sheet(s)(3), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 165(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex C respectively.(4)
(1. *MFB 355 or AFB 296.* 2. *MFM 9.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans YES
(1. *RP 27(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B163691 Pte. William Russell

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.A. Sec 40.	Not Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) N/A (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which nil days were spent in hospital.(2)
(2. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo Detention for a period of 56 days.

(Sgd) N/A Judge-Advocate, if any.

15 Nov 45 Date awarded.

(Sgd) J.E. Richard Lt/Maj. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding and sentence but remit twenty-eight days detention.

~~I direct that the accused be not committed to prison or detention barracks until further order.~~(1)
(1. AA 57A. Delete if not used.)

(Sgd) W. Russell Brig

Date 17 Nov 45 Commanding 2/9 Can Inf Bde CAOF Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B163691 Pte Russell W.	18 Nov 45	D.C. Cameron Lt-Col COMD 3/B,D.& G. Highrs CAOF

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

The accused elects trial by Court-Martial.

AB
FEL

CHARGE SHEET

The accused, B-163691, Pte. William RUSSELL, HQ Coy, 3/SD&G Highrs (CAOF), a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
SEC 40
ARMY ACT

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

In the Field, in Germany, on the night of 31 Oct/1 Nov, 1945, did have a German female in a Military billet, namely, the sleeping quarters of the Officers' Mess.

.....
(D.C. CAMERON,) Lt-Col.
Officer Commanding,
3/SD&G Highrs (CAOF)

In the Field,
7 Nov 1945.

To be tried by Field General Court-Martial.

O.K. for convening
Amie Dr Rosiers margin
for DJAG 3 Cdn Inf Div
13 NOV 45

(N.W. Megill) Brig
Comd
2/3 Cnd Inf Bde CAOF

13 Nov 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	* Unit.
B-163691		Private	William	RUSSELL	3/SD&G Highrs (CAOF)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~s~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 13 Nov 45 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed ~~or detailed hereunder~~ hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a FG Offr as President, for the reasons I have attached thereto.~~

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Maj	J. E. PICKARD		3/HLI of C

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	H.A. STAPLES		3/Nth NS Highrs
Lt	F.F. METCALFE		3/HLI of C

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Lt	E.J. SMITH		3/Nth NS Highrs

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Germany (Country.)

(Signed personally. RP 105 fn 2.) Brig (Rank.)

Dat 13 Nov 45

Commanding 2/9 Cdn Inf Bde CAOF
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 85 (In lieu of AFA S) 40/P & S. 1697 (6142)

(See overleaf for oaths and notes for use on trial.)

J.E.P.

CERTIFICATE OF MEDICAL FITNESS

F.G.C.M.

I hereby certify that B-163691 Pte. RUSSELL W.M.
has been medically examined and declared fit to stand
trial by F.G.C.M.

[signature] Capt

Date 15-11-45

Statements of witnesses during the court-martial proceedings in the case of B163681 Pte William Russell, 3/5 D & Highlanders C.A.O.7. Taken this fifteenth day of October nineteen hundred and forty five at Varel, Germany

Prosecution

1st witness. Major D & S Symmers, 2i/c of 3/5 D & Highlanders, sworn, states:

Pros. Q. State to the court anything out of the usual happening on morning of 1 Nov 1945?

A. On evening of 31st Oct-1st Nov I was out of the lines and returned at 0200 hours 1 Nov. I got something to eat in the mess and then went upstairs to my room on the second floor - had been in my room about 15 minutes and left to go to the lavatory. To get to it you must go through the room of the Commanding officer, Col. Cameron which is across the landing from my own room.

I knew that the colonel was out living at the time at B de H.Q., the lights

were off in his room. Went to open the door of Col. Cameron's room and felt an obstruction of some sort, which later turned out to be a chair, against the door. This was leaning against the door below the handle. I pushed against the obstruction and the door opened, the chair falling to the floor. I switched on the lights. I looked around the room. I saw lying on the colonel's bed, which is in front and slightly to the left of the door, a man lying on the bed fully clothed with the exception of gaiters and blouse I can't be sure of gaiters but he had boots on. I went over towards the bed to see who was there and on moving close to the man I recognized him as the accused Pte. Russell. When I moved over to wake up Russell I then saw that lying beside him asleep also was a civilian woman. I woke Russell up at the same time the woman woke up. I told him to get up and get out and get the woman out. It was obvious to me that Russell had been drinking sometime during the evening but when I woke him, in my estimation, he was not drunk. Russell after some hesitation got up

and the woman did likewise. He then started to put on his battle dress blouse and the woman arranged her clothing and put on her shoes. While this was going on she spoke several words to Russell by which I perceived that she was a German civilian. She picked up several articles of clothing - sweater, scarf - which had been knocked off a chair, the same chair that had been ~~knocked~~ leaning against the door. They both went downstairs. They both went down to the basement floor where the mess kitchen is and after taking a quick look around the room to see that nothing was missing I followed them down to see that the women left the premises. I heard them talking together in the basement and again ordered Russell to get rid of the woman. He said "yes sir," and words to the effect that "she is just going now" - as in fact she did. I returned to the CO's quarters, had another look at the room and bathroom adjoining and some person had been ill in the washbasin in the bathroom. All this took place between, I should say, 0245 and 0315 hours, on the morning of 1st (Nov). That morning

— I had a charge laid against Private Russell.

Pros. Q. Could you recognize pte Russell?

A. Yes, he is next to Mr. Burns.

Cross examined

Def. Q To your knowledge, is this woman you saw in military custody somewhere or in confinement for trespassing on military property?

A. Not that I know of.

2nd witness C 52 48 Cpl Cunningham, R.
H.Q. Coy 35 D. G. Highlanders CDF.
duly sworn, states:

Pros. Q. Will you state to the court anything unusual on the night of Oct. 31st 1945

A. I went down to the kitchen at approximately 11 o'clock (P.M.) and found Pte Russell standing in the doorway with a girl. I told him he had better get her out of the lines. He said he had been trying to get rid of her. Afterwards he started out the door.

Pros Q. What time was this?

A. Between ~~eleven and~~ eleven & eleven-thirty.

Pros Q. When he started out the door

did he take the woman with him?

A. Yes.

Cross examined

Def. Q. Cpl Cunningham, did you see the accused any time before eleven o eleven-thirty?

A. Yes

Def Q. Where did you see him?

A. We went to the dance

Objection by Prosecution allowed on grounds that ~~future~~ more questions such as last above should be used — plus of initiative but not allowed him.

---

def. Q. When you saw the accused in the doorway did you hear any conversation

A. No.

I asked the accused what she was doing in there and he said that he was trying to get rid of her. I told him to get rid of her right away.

def. Q What was condition of accused at this time.

A. Drunk.

Def. Q. Did you see him take her away

A. They were standing at the door as if to go out — with the door open.

Cross-examined

Court. Q. When did you last see the accused

A. Between eleven and eleven-thirty

Court. Q. Where did you go then.

A. I went upstairs, looked into the C Co room to see if the lights were out.

Court. Q Did you give any thought to the accused after that.

A. No sir.

Court Q. Why did you not place the accused under arrest when you saw that he was drunk.

A. I did not see that he was causing any trouble.

End of Prosecution.

Defence

Pte Russell W.

The accused B16369 answers the following questions and makes following statements on oath.

def. Q. Will you tell the court in your own words what happened 31st Oct.

A. I started out to a dance with Cpl Canning from at approximately eight

o'clock. Upon arriving at the dance we found it to be out of bounds to men in uniform. There were a great deal of soldiers around the premises and were drowning their sorrows, by not being able to get in to the dance, in drink. I had a number of drinks given me and then we decided to return to our lines to a show which was being held in the Allee Hotel. On the way back to our lines I stopped and talked to a woman. I tried to talk in German to her and she did not understand. We started off with her back to the lines which is quite proper to bring a female person to the shows there - inside our lines. Upon arriving at the hotel we found the show was over and I started to take the woman out of the lines. I found he- came quite sick through the influence of the liquor and returned to the kitchen of the officers' mess of which I am the cook. I noticed, whilst I was in the kitchen the woman had followed me

I stood talking to her at the door trying to tell her to get out of the lines and started out to take her out of the lines. I took her as far as the road running infront of the officers' mess. I then left her and started to return to my billets which is in the same building only one floor higher than the colonels' room. The reason I did not escort her right out of the lines was because I had become too much under the influence and wanted to get to my bed. I started upstairs and upon reaching the second floor I was very sick. Went into the colonels room where I knew there was a lavatory. I was sick in the colonels room and quite dizzy. I started back out of the room and went and sat on the colonels bed and the next I can remember was the 2/c waking me up and telling me to get the hell out of here. I started out and then was told to take this

bitch with you. This was the first knowledge I had of any other person being present. I immediately led her down the stairs, through my kitchen, put her out the back door and went to wash off the front of my clothes. I then went upstairs to my own bed. When Cpl Cunningham woke me at 5.30 in the morning I was still fully clothed.

Pros. Q. What time did you start out to dance?

A. About eight o'clock.

Pros. Q. How far was this dance?

A. One & a half or two kilometres.

Pros. Q What time did you get back to the theatre?

A. I do not know.

Pros. Q. How did you know there was a lavatory in the C.O's room?

A. The Cpl., being the batman for the C.O. has often taken me into the room beyond the lavatory - his pressing room.

Court Q. What time do shows generally finish in your lines?

A. From ten to a quarter after ten.

Court Q. Was that the only lavatory on that floor?

A. Yes sir - the next nearest lavatory would be three flights down from our quarters.

Court Q. Were you in the habit of using the C.O.'s lavatory?

A. No sir - it was just that I was sick.

Frank T. Metcalfe Lt.
Jr. Member of the Court.

SUMMING UP - PROSECUTION

If it please the Court, I would like to bring to their attention the following :

The C.O's room is on the second floor and it is hardly possible for a person who did not know the house to be able to find their way around, also if a person was wandering around some one would have seen or heard them.

There is a toilet on the main floor, across from the bar. It is only about seven yards from where the accused said he left the woman. The C.O's room is one floor above.

The accused states that he sat on the C.O's bed and then passed out, but when he was found by Major Symmes he had his tunic off.

Also, it was a known fact that the C.O's room would not be occupied that night, as he was acting Bde Commander.

If it please the Court, the Prosecution asks that the accused be found -

GUILTY AS CHARGED.

(H.M. NICHOLSON,) Lt.

Summing up for the Defence

of

B163041 Pte William Grant.

First witness shows that a woman was present in the sleeping quarters of a military billet and that the accused was found in the same room the two was found asleep, fully clothed.

The prosecutions has not proved that the accused brought her in the billets in lieu of her presence.

The defence shows that the accused was trying to get rid of the woman at 2.30 a.m. and later he went to bed from exhaustion & drink. He said he had to lie down on the C.O. bed, on which he fell asleep.

A witty female, hungry & Cold would go to any length to obtain food and bedding.

The accused defence is clear and proves that when he was awakened at 6.30 a.m. and saw the woman he was totally surprised.

With this in mind, I ask the Court to bring forward a finding of "Not Guilty"

Fred A Grant

Def Off

Plea of Mitigation
for Accused
B 163471 Pte Russell

Pte Russell has been found guilty of having a female in the [redacted] Quarters of the officers mess
the fact that he was found in the O.R. quarters
is wrong & when he was not in his barrack room
I say he was the victim of unfortunate circumstances. The victim of a wily female. This woman
should be in military custody not the accused.
If the Capt had placed him under arrest when
he first saw him & the woman this unfortunate
incident could have been avoided
When considering the sentence for Pte Russell
I ask you to be lenient as possible

Lieut H Burns
Adjt 1st

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank.	Name.	Regiment (or as the case may be).
B-163691	Pte.	RUSSELL, W.	3/S.D.&G. Highrs (CAOF)

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The particulars herein stated should correspond with the entries in the Field Conduct Sheet, precedence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. Sec. 40 — 1 times.

For _____ — _____ times.

For _____ — _____ times.

For _____ — _____ times.

Date of first entry in Field Conduct Sheet not available

Date of last entry in Field Conduct Sheet 23 Aug 45.

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. ~~The accused of the present unit was transferred to it from the [illegible] Regiment on the _____ day of _____ beginning on the _____~~

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 15 20 S/Pte days in military custody, i.e., nil S/Pte days in open arrest, 15 S/Pte days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 31 yrs.

6. The date of his attestation is 26 Jul 1944.

7. The service which the accused is allowed to reckon is _____

8. The accused is in possession of NIL.

†State the military decorations (if any) held by accused.

9. ~~If the accused is a warrant officer or N.C.O.—The accused has served continuously without reduction in the grade of~~

~~in the substantive rank of~~ _____ Date of Promotion.

~~in the war substantive rank of~~ _____

~~in the acting rank of~~ _____

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27493) W1.24239/1404 24,000 7/44. A.& E.W.Ltd. Gp.698 Forms/B.296(War)/3

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		- N I L -		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 9th day of November 1945

Capt

MFM 6
(AFB 122)
40/PAM/100 (3458)

B-163691 No | Name RUSSELL, Wm. | Sqn, Battery, or Company | Corps CIC Exhibit B. JEP | Date of enlistment | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				ORIGINAL NOT AVAILABLE.					
Field	23 Aug 45	Pte		AA Sec 40 - cond to prej of GO & Mil Disc, etc - in improper possession of a Ronson lighter and pen & pencil set.	Sgt.Defoe,LF Cpl.Aube,JLR Pte.Carlson, O.R.	28 days detn.	24 Aug 45.	D.C.Cameron, Lt-Col.	28 days pay PR&I-149(1)(b)

Certified true copy from regtl books in my custody.....
(offr in custody of regtl books)
3/5D&G Highrs (CAOF)
7 Nov 45.

(PTO)

SUMMARY OF EVIDENCE

in the case of,

B-163691, Pte. RUSSELL, W., HQ Company, 3/SD&G Highrs (CAOF), a soldier of the Canadian Army Overseas, charged with conduct to the prejudice of good order and military discipline (AA Sec 40).

By direction of the Commanding Officer, the evidence is taken on oath.

FIRST WITNESS — Major G.L. SYMMES, BHQ, 3/SD&G Highrs (CAOF), sworn, states:-

I am Major G.L. SYMMES, BHQ, 3/SD&G Highrs (CAOF). I returned from a party to the unit lines at approx 0230 hrs, 1 Nov 45. I went upstairs to my own quarters. Shortly after, at 0245 hrs, I had occasion to go through the C.O's room to the bathroom beyond. As I opened the door to the C.O's room I felt an obstruction against the door. This later turned out to be a chair which had been placed under the handle of the door. I pushed the door open and switched on the light and looked around to see what the obstruction could be. In doing so I noticed the figure of a soldier in battle dress and boots, but with his blouse removed, lying apparently asleep on the C.O's bed. I moved over to the bed with the intention of waking the soldier, and then recognized the sleeping figure to be the accused, B-163691, Pte. RUSSELL, W., the cook from the Officers' Mess, and also with him was sleeping a German civilian woman. I awakened Pte. RUSSELL, W. and the woman and told him to get up and get the woman out of there. From the few words that I heard the woman speaking, as she was adjusting her clothing and putting on her shoes, I realized she was a German woman. At this time, although it was apparent that Pte. RUSSELL, W. had been drinking earlier in the evening, Pte. RUSSELL, W. was not under the influence of alcohol. I told Pte. RUSSELL, W. to take the woman out of the building and get rid of her. This he did. The following morning the charge was placed against him.

The accused declines to cross-examine this witness.

G.L. Symmes Major
.....
(G.L. SYMMES,) Major

SECOND WITNESS — C-5248, Cpl. CUNNINGHAM, R., HQ Coy, 3/SD&G Highrs (CAOF), sworn, states:-

I am C-5248, Cpl. CUNNINGHAM, R., HQ Coy, 3/SD&G Highrs(CAOF). On 31 Oct 45 at approx 2230 hrs, I returned to my billets. I went upstairs and took off my tunic and then went downstairs to the kitchen to see if the lights had been turned off. I saw B-163691, Pte. RUSSELL, W. standing in the doorway with a woman. They appeared to be leaving the premises. I told Pte. RUSSELL, W. he had better get her out of the lines. They started out the door. I went upstairs to bed.

SUMMARY OF EVIDENCE

in the case of,

B-163691, Pte. RUSSELL, W., HQ Company, 3/SD&G Highrs (CAOF), a soldier of the Canadian Army Overseas, charged with conduct to the prejudice of good order and military discipline (AA Sec 40).

By direction of the Commanding Officer, the evidence is taken on oath.

FIRST WITNESS — Major G.L. SYMMES, BHQ, 3/SD&G Highrs (CAOF), sworn, states:-

I am Major G.L. SYMMES, BHQ, 3/SD&G Highrs (CAOF). I returned from a party to the unit lines at approx 0230 hrs, 1 Nov 45. I went upstairs to my own quarters. Shortly after, at 0245 hrs, I had occasion to go through the C.O's room to the bathroom beyond. As I opened the door to the C.O's room I felt an obstruction against the door. This later turned out to be a chair which had been placed under the handle of the door. I pushed the door open and switched on the light and looked around to see what the obstruction could be. In doing so I noticed the figure of a soldier in battle dress and boots, but with his blouse removed, lying apparently asleep on the C.O's bed. I moved over to the bed with the intention of waking the soldier, and then recognized the sleeping figure to be the accused, B-163691, Pte. RUSSELL, W., the cook from the Officers' Mess, and also with him was sleeping a German civilian woman. I awakened Pte. RUSSELL, W. and the woman and told him to get up and get the woman out of there. From the few words that I heard the woman speaking, as she was adjusting her clothing and putting on her shoes, I realized she was a German woman. At this time, although it was apparent that Pte. RUSSELL, W. had been drinking earlier in the evening, Pte. RUSSELL, W. was not under the influence of alcohol. I told Pte. RUSSELL, W. to take the woman out of the building and get rid of her. This he did. The following morning the charge was placed against him.

The accused declines to cross-examine this witness.

G.L. Symmes Maj.
.....
(G.L. SYMMES,) Major

SECOND WITNESS — C-5248, Cpl. CUNNINGHAM, R., HQ Coy, 3/SD&G Highrs (CAOF), sworn, states:-

I am C-5248, Cpl. CUNNINGHAM, R., HQ Coy, 3/SD&G Highrs(CAOF) On 31 Oct 45 at approx 2230 hrs, I returned to my billets. I went upstairs and took off my tunic and then went downstairs to the kitchen to see if the lights had been turned off. I saw B-163691, Pte. RUSSELL, W. standing in the doorway with a woman. They appeared to be leaving the premises. I told Pte. RUSSELL, W. he had better get her out of the lines. They started out the door. I went upstairs to bed.

SUMMARY OF EVIDENCE in the case of,
B-163691, Pte. RUSSELL, W., HQ Coy, 3/S.D.&G. Highrs (CAOF),
(continued) -

SECOND WITNESS
(continued)

Cross-examined by Accused:-

Q. Is the hour stated the correct time that I was on the premises?

A. As far as I know it is the correct time. I did not look at my watch.

Cpl. S. Cunningham
.....
(C-5248, Cpl, CUNNINGHAM, R.)

The accused was cautioned as follows:-

Q. Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I do not wish to make any statement.

W.M. Russell.

I certify that the foregoing Summary of Evidence, consisting of two (2) pages, was taken down by me in the presence of the accused, and that R.P. 4 (C), (D), (E), (F) and (G) have been complied with.

H. Nicholson
.....
(H.H. NICHOLSON,) Lt.
3/S.D. & G. Highrs (CAOF)
Officer taking Summary of Evidence.

In the Field,
6 Nov 1945.

SUMMARY OF EVIDENCE in the case of,
B-163691, Pte. RUSSELL, W., HQ Coy, 3/S.D.&G. Highrs (CAOF),
(continued) -

SECOND WITNESS
(continued)

Cross-examined by Accused:-

Q. Is the hour stated the correct time that I was on the premises?

A. As far as I know it is the correct time. I did not look at my watch.

E.H. Cunningham
.....
(C/5248, Cpl. CUNNINGHAM, H.)

The accused was cautioned as follows:-

Q. Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I do not wish to make any statement.

W.M Russell

I certify that the foregoing Summary of Evidence, consisting of two (2) pages, was taken down by me in the presence of the accused, and that R.P. 4 (C), (D), (E), (F) and (G) have been complied with.

H.R. Nicholson
.....
(H.R. NICHOLSON,) Lt.
3/S.D. & G. Highrs (CAOF)

In the Field,
6 Nov 1945.

Officer taking Summary of Evidence.

LIST OF WITNESSES

in the case of,

B-163691, Pte. RUSSELL, W., HQ Coy,
3/S.D.&G. Highrs (CAOF), a soldier
of the Canadian Army Overseas.

- - -

Major G.L. SYMMES, BHQ, 3/SD&G Highrs (CAOF).

C-5248, Cpl. CUNNINGHAM, R., HQ Coy, 3/SD&G Highrs(CAOF).

- - - - - -

L I S T O F E X H I B I T S

in the case of,

B-163691, Pte. RUSSELL, W., HQ Coy, 3/SD&G Highrs (CAOF), a soldier of the Cdn Army Overseas.

- - -

- N I L -

- - - - - - -

STATEMENT BY ACCUSED

I, B-163691, Pte. RUSSELL, W., hereby state that I (#) ~~desire~~/do not desire to have an officer assigned by the Convening Officer to represent me at my trial, under provisions of R.P. 14 (B).

D. W. Russell
(B-163691, Pte. RUSSELL, W.)

(#) - Strike out whichever is inapplicable.

STATEMENT BY ACCUSED

In accordance with R.P. 14 (B), I ~~desire~~ do not desire to have an officer assigned by the Convening Officer to represent me at my trial.

Thomas Fisher
(A-6011, Pte. FISHER, T.)

Accused requests:
Capt. F.K. Plourde,
3/North Shore Regt.
CASF

1476. Ste. Rustulka - 6.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this twentieth day of August, 1941. Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of 2 Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; [illegible]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable. [illegible]

PROCEEDINGS REVIEWED [illegible]

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	R. Thompson	Camerons of C

Members.

Rank.	Name.	Regiment.
Lieut.	A. D. Devine	S Sask R
Lieut.	R.L. Rutherford	Camerons of C

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Major-General

Commanding 2 Cdn Div.

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
L-12139 Pte. Carl Rustulka, S Sask R.	First Charge AA Sec 41 Committing a civil offence in that he at Seaford, Sussex, on 17 Jul 41 did steal onion to the value of two shillings. (See Charge Sheet Att)	Guilty	Guilty	
	Second Charge AA Sec 41 (Alternative) Committing a civil offence that is to say, receiving stolen goods. (See Charge Sheet Att)	Charge withdrawn by Prosecutor		Confirmed A. McN.
	Third Charge AA Sec 40 Conduct to the prejudice of good order and military discipline. (See Charge Sheet Att)	Guilty	Guilty	
	Fourth Charge AA Sec 22 When in lawful custody attempting to escape. (See Charge Sheet Att)	Guilty	Guilty	
	Sentence: To undergo detention for ~~12 Months~~ 126 Days.			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :—

(Signed) A. McN. Odlum Maj-Gen. (Signed) R. Thompson Major
Commanding 2 Can Div. Convening Officer (e) President.

D 2.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 23 th day of Aug 41, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) Shorthand writer
*(4. ~~The officers under instruction~~)

were duly sworn.

Signed this 25 th day of August 19 41.

R. Thompson Major
President of the Court Martial.

* Omit if not applicable.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 30 day of Aug. 1941

A. McN. Odlum
Confirming Officer.

Promulgated and extracts taken in the case of L 12139 Pte Rustulka C.S.C.

(a) (Dated) 2 Sep 41 (Signed) Stanley Lindsell A/Capt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] 38692-1316 70m 2/41 W. & Co., Ltd. Gp. 745-2

CHARGE SHEET

The accused, No. L-12139 Pte. Carl Rustulka, South Saskatchewan Regiment, a soldier of the Canadian Army, Active, is charged with:

FIRST CHARGE A.A.Sec. 41 — COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, STEALING

in that he
At Seaford, Sussex, on 17 Jul 41, did steal onions to the value of two shillings, the property of Charles Roland Elliott, of Seaford, Sussex.

SECOND CHARGE (Alternative) A.A.Sec. 41 — COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, RECEIVING STOLEN GOODS,

in that he
at the place and on the date aforesaid did receive the aforesaid onions of aforesaid value, the property of the said Charles Roland Elliott, knowing them to have been stolen.

THIRD CHARGE A.A. Sec 40 — CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he
at Seaford, Sussex, on 17 Jul 41, when questioned by detective constable George White, of East Sussex Constabulary, knowingly gave false information, in that he gave a wrong name and number, that is L10456, Pte. Carl Jackson, "C" Company, S. Sask. R. whereas his name and number are L-12139, Pte. Carl Rustulka, "B" Company, S. Sask. R., and he further stated he did not have his Pay Book (M.B.1), with him, when he had it in his tunic pocket.

FOURTH CHARGE A.A.Sec. 22 — WHEN IN LAWFUL CUSTODY ATTEMPTING TO ESCAPE

in that he
At Seaford, Sussex, on 17 Jul 41, when proceeding under escort to Newlands School, Seaford, Sussex broke away from his escort and attempted to escape.

(Signed) J.E. Wright, Lieut-Colonel,
Comd. S. Sask. R. C.A.(A.F.)

Dated in the Field, this
7th day of August, 1941.

TO BE TRIED BY F.G.C.M.

Certified true copy.

Adjutant S. Sask. R., C.A.(A.F.) Capt.

R.J.

South Saskatchewan Regiment

MEDICAL OFFICER'S CERTIFICATE 25 Aug 41

I certify that No. L-12139 Pte. Rustulka, C.
South Saskatchewan Regiment is* fit
to undergo trial by Court-Martial.

J. W. Hayter Capt.
Signature of Medical Officer.
Regt.

* Insert 'fit' or 'unfit'.

PROCEEDINGS OF A FIELD GENERAL
COURT MARTIAL HELD IN THE
FIELD, 25 AUG 41.

TRIAL OF NO. 112139 Pte. Carl Rustulka, S. Sask. R.

PROSECUTOR:

DEFENDING OFFICER:

- - - -

1. The Order Convening the Court is read to the accused.

2. The accused is asked the following questions:

Q Do you object to being tried by me as President or by any of the Members of the Court whose names you have heard read over?
A No, sir.
Q Do you object to having evidence taken down in shorthand by the shorthand writer?
A No, sir.

3. The accused answers to his name and number and is duly arraigned on the charges.

4. The accused pleads "Guilty" and R. P. 35(B) is complied with.

5. The Abstract of Evidence is read.

6. The Prosecutor files M.F.M. 6 which was formally admitted by the defending officer.

The accused makes no statement in mitigation of punishment.

THE COURT IS CLOSED FOR CONSIDERATION OF SENTENCE

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE RECORD
OF THE PROCEEDINGS OF THE ABOVE TRIAL.

R. Thompson

(R. Thompson) Major
President.

Summary of Evidence in the case against No.L-12139 Pte. Carl Rustulka, South Saskatchewan Regiment, a soldier of the Canadian Army (Active)

1st Witness for the Prosecution:

Charles White, a detective constable of the East Sussex Constabulary, Lewes Division, stationed at Seaford Sussex having been duly sworn states:-

I am Charles White, Detective Constable of the East Sussex Constabulary, Lewes Division, stationed at Seaford. On the night of 17 Jul 1941 at approx. 2230 hrs. in the performance of my duties I took up an observation post in an empty house from which I could see the garden allotments on Marine Crescent Seaford Sussex. I took up this post in order that I could watch the garden as there had been complaints that people were stealing from these gardens.

At approx. 2255 hrs on 17 July 1941 I saw a soldier enter the allotment which I had previously ascertained to belong to C. Elliott of Seaford. I saw him pull something from the allotment and run up the bank and wall along Marine Crescent which street runs past these allotments. I saw that he had the bundle of onions, now produced before me, and marked for certification by me, in his hand. I informed him that I was a plain clothes police officer and showed him my authority and after warning him that he would be charged with theft of the onions, he told me his name was Carl Johnson and his number was No.L-10465 of "C" Coy S. Sask. R. Cuckmere. I asked for his pay book to rectify these facts but he replied that he had left it at home. I then informed him he could consider himself in custody and that he would have to go with me to Newlands School, Seaford where Regimental H.Q. of the S. Sask. R. are located.

We proceeded together along the road and after going a short distance accused suddenly ran away from me into a chump of bushes. I gave chase and caught him and held him to the ground at which he agreed to accompany me from there on peacefully. On reaching Newlands I escorted acc. into presence of duty officer Lieut Wm Gardner and explained to that officer the full facts. Accused then advised me that he had not given me his correct name and number and took from his tunic pocket his pay book A.B.64 which he handed to me. From it I found that his correct name is Carl Rustulka No. L-12139 South Sask. Regt. 'B' coy. The duty officer Mr Gardner then placed accused under open arrest.

(Signed) Charles White Det.Cons

The accused declined to question the witness.

R.S

2nd Witness for Prosecution

Lieut William Gardner, South Saskatchewan Regiment an officer of the Canadian Army (Active) being duly sworn states:

I am Lieut William Gardner, South Saskatchewan Regiment, Canadian Army (Active).

I was duty officer for the Regiment on 17 July 1941 and was on duty at Battalion HQ. on that night. At approximately 2330 hrs Const White of the local constabulary escorted the accused into my presence and gave me the circumstances in which he had found Rustulka and that he was bringing a charge of stealing onions against him. Accused then told the Constable he had given him the wrong name and number and handed to the constable his Pay Book A.B.64.

The constable took down particulars from the book and returned same to accused. I then placed accused under open arrest.

(Signed) W.J. Gardner Lieut.

The accused declined to question the witness.

3rd Witness for Prosecution

Mr. Charles Roland Elliott of No.4 Clinton Lane Seaford Sussex having been duly sworn states:

I am Charles Roland Elliott of No.4 Clinton Lane Seaford Sussex. I have a garden allottment at Marine Crescent Seaford. On this allottment among other vegitables I have a large bed of growing onions. During the 10 days preceeding 17 July 1941 I had found that several number of onions had been stolen from this onion bed and that the bed had been trampled on. As I am a married man doing only occasional work I could not afford to lose these onions so I reported the matter to the police.

On 18 July 1941 Det. White produced a bunch of 21 onions before me. I stated that I could not identify them as having been taken from my allottment but on visiting the garden I found several more onions missing than had been on the previous day and that further damage had been done to the allotment by people trampling in it. The bunch of onions shown me by Det. White and now produced before me I value at 2 Shillings.

(Signed) C. Elliott

The accused delined to question the witness.

Question to Accused: Do you wish to make any statement or give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer by Accused: No Sir.

I certify that the foregoing summary of evidence was taken down by me in the presence of accused and Rules of Procedure 4(c), (d), (e) and (f) have been complied with.

(Signed) Jack Brudenell, Lieut.

Date 30 July 1941
Place Seaford, Sussex.

Certified true copy.

Capt.
Adjutant S. Sask. R.

No. I-12139 Name Mustalla, O. Sqn., Battery, or Company Corps T. Sask.R.

Date of last entry in Company Conduct Sheet 5-6-41 No. and date of last drunk Period not reckoning towards freedom from extra fine Date of enlistment 10-2-39 G.C. Badges Service or Proficiency Pay

Sheet No. Signature O.C. Company, etc. Character

M.F.M. 6 (A.F.B. 127) 30M—8-39 (17701) H.Q. 1772-45-38

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order closed-ing with trial	By whom awarded	Remarks
Shilo	2-6-40	Pte		A.W.L. 4 days 21 hrs 30 minutes		10 days det 8 days pay	9-6-40	Lt.Col. Wright	
Shilo	22-9-40	Pte		Insubordinate Language		3 days C.B.	25-9-40	Major W.S. White	
Shilo	2-10-40	Pte		A.W.L. 8 days 10 hrs 30 minutes		14 days det 8 days pay	9-10-40	Lt.Col. Wright	
Toronto	26-11-40	Pte		Absent from t.c. parade		3 days C.B.	28-11-40	Major White	
Toronto	4-12-40	Pte		A.W.L. 2 hrs 5 minutes		7 days C.B.	6-12-40	Major White	
Norval	15-2-41	Pte		Late on parade		2 days C.B.	17-2-41	Major White	
Norval	1-3-41	Pte		Absent from parade (defaulters)		5 days C.B.	5-3-41	Major White	
Norval	20-3-41	Pte		Refused to parade, quick order & drill duty.		7 days C.B.	24-3-41	Major White	
Norval	20-7-41	Pte		Absent from parade		2 days C.B.	23-7-41	Major White	

Certified to be a true copy

(A.) Captain
Adjutant 3 Sask.R., C.A.(I).

P.T.O.

M.F.B. 355
5M.10-39 (2492)
H.Q. 1772-39-620

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
L-28139	Pte	Rastulka, C.	South Saskatchewan Regiment

1. The following is a fair and true summary of the entries in the Field Service and General Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, Air Force Act of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For A.W.L.	2 times	A.W.L. three times
For Insubordinate language	one time	Insubordinate language one time
For Absent from parade	Three times	Absent from parade Three times
For Conduct to prejudice good order and Military discipline, late on parade	one time	Conduct to prejudice good order and Military discipline one time one time late on parade one time

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act A.F.A. 73 Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for beginning on the day of

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and five days in military custody, making a total of five days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is attestation paper is 19 Years

6. The date of his commission specified in his record of service is attestation attestation paper 15 Sept 39

7. The service which the accused is allowed to reckon towards discharge is One year 11 months 10 days

8. The accused is entitled to reckon 11 months service for the purpose of determining his pension, etc. 10 days

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is military military in possession of or entitled to). State any air force decoration or reward. military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

dated , and in his regiment (or corps), the rank of

dated

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number Rank

Name of Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 25 day of aug 41

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

HB·61

PTC RUSTULKA C.

RECORDED AT CMHQ IN AB 160 - 4/13-61

RECEIVED 30 OCT 1944

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFAS) 40/P & B/1098 (S1441) 4/38B

Convened by Order of Brigadier J.E.Ganong, ED Comd HQ CRU "D" Gp dated 19 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L 12139	Pte		Carl	RUSTULKA	S SASK R 1 CIRU

PROCEEDINGS REVIEWED

J&C Toronto Airways Limited 1 Nov 44

REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) ..... on (*date(s)*) 20 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which insts are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (if attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2).~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. President to accused: Do you object to ..... as interpreter? Ans N.E.

The Interpreter is sworn.(1) Do you object to Cpl. W.J.Reeves as shorthand writer? Ans No.
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.N.Bowman	48 Highrs	3 C IRU
Member	Capt.	D.M.Jacquest	L.Edmn R.	1 C IRU
Member	Lieut	A.C.Gow	NWA NS. Highrs	4 C IRU
Judge-Advocate	—	—	—	—
Prosecutor	Lieut	R.B.Allan	C.I.C.	1 C IRU.
Defending Offr	Capt	F.C.Monroe	RRR	1 C IRU

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be retained separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused L 12139 Pte Carl RUSTULKA before arraignment make(s) (no) (a) plea (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form Proc E.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination, and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 3 and* 2. *MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing at Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....;(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed ~~on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans.....Do you intend to call witnesses on your behalf ?
Ans.....Are they witnesses as to character only ? Ans.....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith; and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (c), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans.....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex.....and Ex.....respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans.....(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: L 12139 Pte Cpl RUSTULKA, S SAEK R - 1 CIRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 12(1)(a)	Not Guilty	Not Guilty	Not guilty desertion but guilty of absence without leave. AA sec. 15
2nd			
3rd	20 Oct HH		
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for N.A. beginning on (date) N.A. (1)
(1. Insert sentence being served, or delete. If not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which Nil days were spent in hospital.(2)
(2. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo Detention for seventy five days.

(Sgd) N.A. Judge-Advocate, if any. 20 Oct HH Date awarded. (Sgd) W.H. Dawson. Lieut Col President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further order.~~ (1)
(1. AA 57A. Delete if not used.)

(Sgd) ..... Brig Comd,
Date 22 Oct 44
Commanding "B" Gp, Can Rft Units
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
L-12139 Pte Rustulka, C. 1 CIRU	25 OCT 44	J.B. Mace Col.

Extracts taken, published in Part II DO 216 dated 24 Oct 44.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Ex. "A"

CHARGE SHEET

The Accused, No. L-12139 Private Carl RUSTULKA, South Saskatchewan Regiment, on the strength of No. 1 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Section 12(1)(a)
ARMY ACT

WHEN ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE,

in that he,

In the Field, at 1045 hours on the 28th day of September, 1944, having been warned for draft for the performance of a special duty, absented himself without leave from No. 1 Canadian Infantry Reinforcement Unit, with intent to avoid such special duty, until surrendering himself at No. 1 Canadian Infantry Reinforcement Unit at 1115 hours on the 10th day of October, 1944.

Total Absence: 12 days, 30 minutes.

C.B. Ware

(C.B. Ware) Colonal,
Commander,
1 Cdn Inf Rft Unit.

In the Field,

13th day of October, 1944.

To be tried by Field General Court Martial.

J.E. Gehong

(J.E. Gehong) Brigadier
Commanding
"D" Group, Cdn Rft Units

In the Field

19 Oct 44

Ex. B

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V pares 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L 12139	Pte		Carl	RUSTULKA	S SASK R 1 CIRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 19 Oct 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

Major (Rank.)	J.M. Bowman 48 Highrs (Must be named. RP 106.)	3 CIRU (Unit.)

MEMBERS.

1 Captain	to be detailed by Commanding Officer	1 CIRU
1 Lieutenant (Rank.)	to be detailed by Commanding Officer (Named or detailed. RP 106.)	4 CIRU (Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Dat 19 Oct 44

(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Commanding HQ 3D Group, Cdn Rft Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 3)
40/P & S/1697 (6145)

(*See overleaf for oaths and notes for use on trial.*)

Ex. C.

MEDICAL CERTIFICATE—CONFIDENTIAL

K.R. (CAN) PARA 537

I certify that I have this morning examined

No. 412139 Pte Rustulka. G.....

of 7 C.A.M.C. .....and in my opinion he

is fit ~~unfit~~ to undergo Trial by Court Martial.

Station Zaltbommel .....

Date 20.10.44..... Medical Officer

4 B

Ex. K.

PLEA OF MITIGATION OF SENTENCE

L 12139 Pte Rustulka, C

1 The accused is 24 yrs of age, A category and a well trained soldier.

2 He fought gallantly in France & is most willing to regain his unit in action at the earliest possible moment.

3 He is devoted to his wife & worries about her.

4 I suggest that the cause of justice and the allied war effort will best be served by a very short sentence and an early return to the fd.

[illegible]
Capt
I C I R U
Defending Officer

JAB

EX. D

In the case of Number L.12139 Private C. RUSTULKA, SouthSaskatchewan Regiment, on the strength of No. 1 Canadian Infantry Reinforcement Unit.

OPENING ADDRESS BY THE PROSECUTING OFFICER

Just a few words to say that the witnesses I will call, I anticipate, will state that the accused was on a parade which was warned for draft and that some time later when an inspection parade was called before the draft was to move that the accused was absent.

FIRST WITNESS FOR THE PROSECUTION

Number H.16489 Sergeant Longmuir, W.G., P.P.C.L.I., on the strength of 1 Canadian Infantry Reinforcement Unit having been duly sworn states as follows:

I am No. H.16489 Sgt Longmuir, W.G., P.P.C.L.I., on the strength of 1 Canadian Infantry Reinforcement Unit, employed as clearing NCO of the Training Increment of F Company at 1 CIRU.

Q.1 What are your duties in that repect?
A.1 Clearing all men getting them ready to go on draft.

Q.2 Will you tell the Court what you know about this case?
A.2 I am clearing NCO of the Training Increment F Company at 1 CIRU. I was present on this parade held at 1300 hours the 27 September 1944 for the purpose of warning all personnel proceeding on draft. L.12139 Pte Rustulka, C. was present on this parade. I know for sure that his name was on the nominal roll for draft. I also know for sure that no-one's name that was on the nominal roll was absent from this parade.

Q.3 What happened on that parade?
A.3 The roll was called sir.

Q.4 Will you tell the Court just how it was called -- what was the manner of calling?
A.4 The officer called the roll and hollered out RUSTULKA and he answered by giving his number, L.12139, and his initial, C. Then he fell out on a different parade in a hollow square and the warning read.

Q.5 Would you explain what you mean by a different parade?
A.5 They fell out in one place and then moved them over in a hollow square so that they could hear the warning easily.

Q.6 There was no question of the first parade breaking off?
A.6 No sir.

Q.7 Do you know the accused to see him?
A.7 No sir.

Q.8 Will you go on from there?
A.8 The warning order was then read by Capt W. G. Burgess. You have been selected to proceed on a draft for the performance of a special duty and you are now warned that you must be present and ready to go when the draft is sent off. Any unauthorized failure on your part to go with the draft when it leaves will result in your being charged with desertion on active service. Similarly any unauthorized absence while the draft is in transit or at any intermediate point or before its final destination will result in your being charged with desertion on active service. If you are convicted of desertion the Court has the power to sentence you to a maximun sentence of penal servitude for life.

WB

FIRST WITNESS FOR THE PROSECUTION (CONT'D)

At any time prior to the departure of the draft a parade will be called on which you must be present and at which time the correct date and time of departure will be told you. The draft was also warned by Capt. W. G. Burgess that they were confined to barracks. Repeat confined to barracks. I was standing in the rear of the parade and could hear the warning order clearly and distinctly.

Rules of Procedure 83(b) have been complied with.

SECOND WITNESS FOR THE PROSECUTION

Number H.16160 C.S.M. Hosegood, T., P.P.C.L.I., on the strength of No. 1 Canadian Infantry Reinforcement Unit, having been duly sworn, states:

I am No. H.16160 CSM Hosegood, T., P.P.C.L.I., on the strength of No. 1 Canadian Infantry Reinforcement Unit, employed as Sergeant Major of F Company.

Q.1 What are your duties?
A.1 My duties are preparing men for draft for the field.

Q.2 Will you tell the Court about this particular incident?
A.2 Pte RUSTULKA was in my Company on the 27 September 1944. We called a parade for 1300 hours 27 Sep 44 for the purpose of a warning order being read to the men proceeding on draft. Roll call was called and Pte RUSTULKA answered to his name by giving his regimental number and name which was L.12139 Pte RUSTULKA, C. He then fell out of the squad to the right where the sergeant was forming them up again in a hollow square for the purpose of the warning order being read. The warning order was then read by Capt. Burgess. When the warning order was being read I stood behind the draft and heard him quite distinctly.

Q.3 Do you know the accused to see him?
A.3 I do now sir.

Q.4 Did you at the time?
A.4 No sir.

Rules of Procedure 83(b) have been complied with.

THIRD WITNESS FOR THE PROSECUTION

Captain W. G. Burgess, R.R.R., on the strength of 1 Canadian Infantry Reinforcement Unit, employed as 2 i/c F Company, having been duly sworn states:

I am Capt. W.G. Burgess, R.R.R., on the strength of No. 1 Canadian Infantry Reinforcement Unit, employed as 2 i/c F Company, as draft officer for the field.

Q.1 Will you tell the Court what you know about this case?
A.1 On the 27 September 44 at approximately 1300 hours I called a nominal roll of draft UKAG/9. The personnel on this parade answered by giving their number and initials. There was no absentees on this draft warning parade.

A document is passed to Capt Burgess and he recognizes it as the nominal roll of UKAG/9

Q.2 Is there anything about this nominal roll that has anything to do with this case?
A.2 The number, rank and name of Pte RUSTULKA is on this nominal roll.

Ex. D

THIRD WITNESS FOR THE PROSECUTION (CONT'D)

Q.3 Do you know anything about this particular document?
A.3 That is the nominal roll that I called on that parade.

Q.4 This is the one?
A.4 Yes.

Q.5 Will you go on from there Capt Burgess?
A.5 As I called the roll personnel whose names I called answered and fell out to the right of the parade, where they were formed into a hollow square by a sergeant. After calling the complete roll I read the draft warning order to the parade.

Q.6 Will you tell the Court what this documentis?
A.6 This is the draft warning order which I read the 27th September 1944, draft demand UKAG/9.

Rules of Procedure 83(b) have been complied with.

J.H. Lawson, Major

FOURTH WITNESS FOR THE PROSECUTION

Number M.15894 Sgt Benson, T.R., 49th Edmonton Regiment, on the strength of 1 Canadian Infantry Reinforcement Unit, having been duly sworn states:

I am No. M.15894 Sgt Benson, T.R. 49th Edmonton Regiment, on the strength of 1 Canadian Infantry Reinforcement Unit, employed in F Company as the clearing NCO at No. 1 CIRU. Pte RUSTULKA L.12139 was in my squad. On 27 September 1944 at 1300 hours Pte RUSTALKA was present when the draft warning was read by Capt. Burgess and warned that they were Confined to Barracks. At 1045 hours on 28 September when I fell in my squad Pte RUSTULKA was absent. He was also absent at 1400 hours on draft pay parade.

Q.1 Do you know this Pte RUSTULKA to see him?
A.1 Yes sir.

Q.2 Have you seen him today?
A.2 Yes sir.

Sgt Benson identifies the accused Pte RUSTULKA.

Q.3 Do you know if he was present on the warning parade?
A.3 Yes sir.

Q.4 Did you see him there?
A.4 Yes sir.

Q.5 How did you find him absent?
A.5 When I called the roll he was absent and I checked the quarters and there was nothing there but his equipment. This was about 1045 hours 28 Sep 44.

Rules of Procedure 83(b) have been complied with.

J.H. Lawson, Major

FIFTH WITNESS FOR THE PROSECUTION

Number G.18154 L/Corporal Brayall, M., Carlton & York Regiment, on the strength of 1 Canadian Infantry Reinforcement Unit, having been duly sworn states:

JHLO

FIFTH WITNESS FOR THE PROSECUTION (CONT'D)

I am G.18154 L/Corporal Brayall, M., Carlton & York Regiment, on the strength of No.1 Canadian Infantry Reinforcement Unit.

Q.1 How are you employed at 1 CIRU?
A.1 Employed as Regimental Police 1 CIRU.

Q.2 What do you know about this case?
A.2 At approximately 1115 hours 10 Oct 44 while on duty as NCO i/c Guard Room Pte RUSTULKA surrendered himself to me.

Q.3 Do you know this man to see him?
A.3 Yes sir.

Q.4 Can you point him out?
A.4 Yes sir.

L/Corporal Brayall identified the accused.

Q.5 That is the man who surrendered himself?
A.5 Yes sir he was sober and properly dressed and clean shaven.

Question by the Defending Officer

Q.1 Was he in uniform?
A.1 Yes sir.

Prosecution is closed.

Rules of Procedure 83(b) have been complied with.

H.A. Bowman. Major

Statement by the Defending Officer:

I am making formal application for dismissal of this charge at this time.

FIRST WITNESS FOR THE DEFENCE

Number L.12139 Pte RUSTULKA, C., South Saskatchewan Regiment, on the strength of No. 1 Canadian Infantry Reinforcement Unit, having been duly sworn states:

I am No. L.12139 Pte RUSTULKA, C., South Saskatchewan Regiment, on the strength of No. 1 Canadian Infantry Reinforcement Unit.

Q.1 You are the accused in this case?
A.1 Yes sir.

Q.2 How old are you?
A.2 23 sir.

Q.3 What education have you?
A.3 Grade eight sir.

Q.4 Are you married?
A.4 Yes sir.

Q.5 You have heard the evidence of the witnesses forthe prosecution that you were warned for draft on a warning parade on the 28th September what have you to say to that?
A.5 Is was on the 27th sir not the 28th.

Q.6 Were you on that parade?
A.6 Yes sir.

JWB

Ex "D"

FIRST WITNESS FOR THE DEFENCE (CONT'D)

Q.7 Did you go AWL after the parade?
A.7 Yes sir.

Q.8 You don't deny the evidence that has been given that you surrendered yourself voluntarily to the Guard Room on the 10 October?
A.8 No sir.

Q.9 When did you enlist?
A.9 17 Sep 39.

Q.10 When did you proceed overseas?
A.10 13 Dec 40.

Q.11 How long have you served in England and where else have you served?
A.11 I served about 3 years and ten months in England with the South Saskatchewan Regiment and then I proceeded to France and was there for about one month with the South Saskatchewan Regiment.

Q.12 Then what happened?
A.12 I was wounded and sent back to England.

Q.13 Where were you wounded?
A.13 In the right thigh sir.

Q.14 How long were you in hospital?
A.14 A little over three weeks sir.

Q.15 You have told us that you are married?
A.15 Yes sir.

Q.16 Were is your wife living?
A.16 In Reading, England.

Q.17 What is the state of her health?
A.17 It is very poor sir. She's been doing a lot of worrying and she has also been ill for some time. I have been to France and back and she is going to have a child in seven months time and she is very nervous and has bad health. She does a lot of worrying about me and our home. That is the reason I tried to get home and try and do something for her. I think quite a lot of my wife and do a lot of worrying about her. When I went home I tried to get a good home for her so she would be able to live comfortably. We have only one room which she is living in now and it is very small and is not big enough to live in and when she get's the child it will not be big enough. She has no washing facilities or anything.

Q.18 When you went absent where did you go?
A.18 Home to my wife. At that time my wife was ill in bed.

Q.19 What did you do while there?
A.19 I was looking for a home for her and trying to do the best I could for her. When I'm home she feels pretty good but when I'm away she can't eat or sleep or can't do without me sir.

Q.20 Did you go absent for the purpose of avoiding the draft?
A.20 No sir.

Q.21 Why did you go absent?
A.21 To see my wife and get things straightened out.'

And

FIRST WITNESS FOR THE DEFENCE (CONT'D)

Q.22 How long have you been in the reinforcement unit?
A.22 About two months, since discharge from hospital.

Q.23 Have you been physically fit and available for draft during that time?
A.23 No during that time sir but they didn't have my category and were holding me until they received the record of my medical history.

The witness is examined by the Prosecuting Officer.

Q.1 You say that you heard the warning order read. Did you understand that warning?
A.1 Yes sir.

Q.2 Did you hear all of it?
A.2 Yes sir.

Q.3 Did you know that you might be charged with desertion if you went?
A.3 Yes sir.

Q.4 And that you would therefore miss the draft?
A.4 That's right sir.

Q.5 What did you expect would be the result of staying away for twelve days?
A.5 I knew I'd be put in orders about that and asked why I had done it.

Q.6 Did you expect that you would be punished for it?
A.6 Yes sir.

Q.7 When you're doing punishment you can't go on draft?
A.7 No necessarily sir. There are lots going on draft who are doing minor punishment.

The accused is questioned by the Court.

Q.1 What is the length of stay in camp of the average draft after they have been warned?
A.1 I don't know sir.

Q.2 Did you ask to be paraded to your Coy Comdr in order to get compassionate leave?
A.2 I paraded a week before that sir but only got 48 hours and I couldn't do anything in 48 hours.

Rules of Procedure 83(b) have been complied with.

J.M. Bowman Major

SECOND WITNESS FOR THE DEFENCE

Captain Smith, C.D., South Saskatchewan Regiment, on the strength of No. 1 Canadian Infantry Reinforcement Unit, having been duly sworn states:

I am Capt. Smith, C.D., South Saskatchewan Regiment on the strength of No. 1 Canadian Infantry Reinforcement Unit.

Q.1 Do you know the accused?
A.1 Yes.

Q.2 How long have you known him?
A.2 Since 1939.

Q.3 Would you tell the Court where you have known him?
A.3 I have known Pte RUSTULKA personally since May of this year having taken over a Support Company of

JMB

Ex. D

SECOND WITNESS FOR THE DEFENCE (CONT'D)

A.3 which Pte RUSTULKA was a member at that time. Previous to that I had known him in the Regiment but not personally. In May I took over the Coy and then Pte RUSTULKA was a member in the anti-tank platoon. Shortly after taking over the Coy I had the opportunity of meeting Pte RUSTULKA's wife when he at one time came to me to take his wife home, as he wanted my permission. After meeting his wife I had a talk to Pte RUSTULKA in regard to his conduct and after this talk I have had no trouble with him. He did a good job and willingly. In July of this year I took the Support Company over to France with the Battalion and Pte RUSTULKA went over as a member of the Anti-tank platoon and during the time he was in France he did an excellent job and during one particular action he was taken forward with his officer during an attack acting as a guide to his platoon to take them into position. He for four hours at that time worked in an exposed position under heavy fire to get them in the position. He didn't have the help of any officer or NCO and was personally responsible for getting the only gun in the platoon into action, that was got into action. He carried on in this manner until he was wounded when he made his own way back. He was recommended for a decoration by two officers of the Unit but unfortunately at the time I was unable to get the recommendation into Brigade by the deadline, otherwise I feel sure he would have received the M.M.

Rules of Procedure 83(b) have been complied with.

Lt. Col. Sawyer

THIRD WITNESS FOR THE DEFENCE

Number B.72644 Sgt F. S. Farndon, 48th Highrs of Canada, on the strength of No. 1 Canadian Infantry Reinforcement Unit, having been duly sworn states:

I am No. B.72644 Sgt F. S. Farndon, 48th Highrs of Canada, on the strength of No. 1 Canadian Infantry Reinforcement Unit, employed as Provost Sergeant at No. 1 CIRU.

Q.1 Do you know the accused?
A.1 Yes sir.

Q.2 Tell us how you came to know him?
A.2 The accused is a soldier awaiting sentence in my Guard Room at 1 CIRU and he surrendered himself to the Guard Room.

Q.3 Do you know the wife of the accused?
A.3 On 18 Oct 44 at approximately 1415 hours I was called to the door of the Guard Room as I was sitting in my office, by one of the provost staff, a corporal, and he told me there was a woman outside who wished to speak to me. Going outside I asked the woman her business and she told me she wished to speak to the accused as she was his wife. I asked her if she had received the permission of the adjutant and she told me she was in no condition to see anybody.

Q.4 Tell us about the state of her health?
A.4 She looked to be very much upset, there was tears in her eyes, and when I asked her if she had seen the adjutant she said she couldn't see

AMB

THIRD WITNESS FOR THE DEFENCE (CONT'D)

A.4 anybody as she wasn't in a fit state of mind and her eyes filled up with tears and she seemed to be in a very very nervous state.

Q.5 Did she break down in the guard room?
A.5 Yes sir. I admitted her into my office to see the accused and the woman did cry and at different times I had to go into my office and this woman had tears in her eyes. She was very upset.

Lt Dawson Legal Officer

Rules of Procedure 83(b) have been complied with.

Address by the Defending Officer:

I should like to refer the Court to Note 1 Section 12 of Page 437 of the MML which states:

To establish desertion it is necessary to prove some circumstance justifying the inference that the accused intended not to return to military duty in any corps, or intended to avoid some important particular service, such as active service embarkation for service abroad or service in aid of the civil power. If the basis of the charge is an intent to avoid embarkation, or some other special duty or service, the particulars should contain an allegation to this effect.

The essence of the charge of desertion is the intention of the accused at the time he went absent. The facts in this case Mr President are not in dispute, the accused admits that he was on roll call parade. That he heard the warning read and that he surrendered himself. If it is shown that he went absent for any purpose other than to stay absent indefinitely or to avoid this special service alleged then I submit he is not guilty of desertion at law. The evidence that the accused has given under Oath is that he went absent to see his wife who is pregnant and was ill at the time and further that he worries a lot about her condition which I suggest is a very normal thing under the circumstances. He states that she is living in a house, in a room which is not big enough for her and that he was anxious to get her a better place before returning to France again. His wife's condition, he states, is one of extreme nervousness and I have called Sgt Farndon who corroborates that fact. For the information of the Court I wish to state that I spoke to the wife of the accused yesterday and she said she was willing to give evidence but she wasn't fit and I have therefore called the Sergeant in with the hope that that will prove to be sufficient and accept the fact that the wife is sick and in a nervous condition. The accused is charged with desertion. If he is convicted he is guilty of a cowardly act. Capt Smith who has been with the accused in action has given a very good recommendation of him. He has said that he conducted himself with gallantry and honour in France and that is a fact which in a case of this kind should weigh very heavily with the Court. I should like to direct the attention of the Court to the fact that there has been no evidence submitted to say that the accused did miss the draft. The draft that the accused was on has not yet, as far as we know, left England, and that is a weakness in the case of the Prosecution.

JAB

Ex. D.

Address by the Defending Officer - Continued:

I would further like to refer the Court to Section 189(1) which defines active service as "The expression "on active service" as applied to a person subject to military law means whenever he is attached to or forms part of a force which is engaged in operations against the enemy or is engaged in military operations in a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country." I suggest that the particular service which the accused intended to avoid by going absent must be shown to be in the face of the enemy to ascertain a foundation for desertion. This section is not meant to apply to soldiers who by being absent avoid a particular service hundreds of miles from the front lines. It is most desirable I suggest that punishments in the army should be uniform. The fact is that Canadian soldiers who have missed boats from Canada to England have seldom been convicted of desertion and that crossing the Atlantic for a good many years was a more dangerous thing than crossing the channel today. I suggest gentlemen that this particular service which it is alleged the accused missed by going absent has got to be shown to be on active service in the strictest sense of the word which means up front. This part of the desertion section is meant to apply to a fellow who goes absent a half an hour before H Hour before an attack. It is not meant to apply to a fellow who goes absent to avoid a particular service like a draft leaving Canada for England or for an exercise in England. The burden of proof is on the Prosecution as always. It is up to the Prosecutor to show that the accused went absent to avoid this particular service. I suggest that the evidence before you is of such a nature that you might reasonably conclude that the accused went absent to see his wife for very good reasons and that it was incidental thereto that he did miss the draft, if any. In conclusion I would like to direct your attention to the possibility of reasonable doubt which applies in all criminal proceedings, if the Court entertains any reasonable doubt as to the intention of the accused it must be resolved in his favour. That is our law. With the facts before the Court I suggest that you cannot conclude beyond a reasonable doubt that the accused who is a brave soldier in action went away to avoid going to France. I think the more likely interpretation of these facts are that he went away to see his wife and he wore uniform all the time he was away and returned voluntarily after he had things straightened out a little bit in the hope of going to France.

Rules of Procedure 83(b) have been complied with.

Address by the Prosecuting Officer. J.M. Lawson, Major

I feel there are two points I must answer. The first one is my friend's reference to the fact that there is no evidence to the fact that this draft left and I point out that that is not part of the charge. The mere fact of intention to avoid such draft is the thing that matters. The other thing is his reference to Section 189. The mere reading of Section 12 of the Army Act should be sufficient to clear that up. Active service has as its object what punishment shall be awarded in cases of desertion. All through the reading of this section it is clear that you can be convicted of desertion and not be on active service.

JMB Case closes. JMB

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at 1 CIRU, In the Field, preliminary to my Court Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court Martial.

Signed at 1 CIRU
In the Field,
this. 4th day
of Oct 1944

Ex. D (1)

C. Russell

~~I hereby request that the convening Officer appoint an Officer to represent me at my trial.~~

I desire the services of Capt Thomas 1440 if he is available.

Ex. E

"F" Coy 1 Cdn Inf Reinf Unit 27 Sep 44

DRAFT WARNING

Certified that personnel whose names are listed on this Nominal Roll consisting of 3 pages were present at a parade held at 1300 hours 27 Sep 44, and that said personnel were warned for draft by ~~Major J.H. Turner~~. The Draft Warning was in the most definite terms and included the following statements:

(a) "You have been selected to proceed on a draft for the performance of a special duty, and you are now warned that you must be present and ready to go when the draft is sent off."

(b) "Any unauthorised failure on your part to go with the draft when it leaves, will result in your being charged with Desertion on Active Service."

(c) "Similarly, any unauthorised absence on your part while the draft is in transit or at any intermediate point before its final destination will result in your being charged with Desertion on Active Service."

(d) "If your are Convicted of Desertion, the Court has the power to sentence you to a maximum sentence of penal servitude for life."

(e) "At some time prior to the departure of the draft, a parade will be called on which you must be present and at which time the exact date and time of departure will be told you."

.....Capt
(~~W.O. Burnes~~) Warning Officer

UKAC/9 PERSONNEL

1. (W.L. Brown) Lieut
2. (A. Wilkins) Lieut.
3. M56191 Sgt. Laub, H
4. M46569 A/Sgt. Black, J.K.

1 C.I.R.U. PERSONNEL

1. (~~W.O. Burgess~~) ~~Draft Officer~~ A/Capt
2. (W.D. Lowden) Lieut.
3. M15160 C.S.M. Hosegood, T.
4. M15489 Sgt. Longmuir, W.G.

EXHIBIT A

Ex. F

Page 1.

Exhibit F
Lam. Ca.

1 CANADIAN INFANTRY REINFORCEMENT UNIT

PART I ORDERS (Supplementary)
by Colonel C.D. Ware, D.S.O.
Order No. 2420 Commander 28 Sep 44

DRAFT WARNING

Certified that personnel whose names are listed on this Nominal Roll, as under, were present at a parade held at 1300 hrs, 27 Sep 44, and that said personnel were warned for draft. The Draft Warning was in the most definite terms and included the following statements:

(a) You have been selected to proceed on a draft for the performance of a special duty, and you are now warned that you must be present and ready to go when the draft is sent off.
(b) Any unauthorised failure on your part to go with the draft when it leaves, will result in your being charged with Desertion on Active Service.
(c) Similarly, any unauthorised absence on your part while the draft is in transit or at any intermediate point before its final destination will result in your being charged with Desertion on Active Service.
(d) If you are convicted of Desertion, the Court has the power to sentence you to a maximum sentence of penal servitude for life.
(e) At some time prior to the departure of the draft, a parade will be called on which you must be present and at which time the exact date and time of departure will be told you.

Warning Officer: Capt. W.G. Burgess

Witnesses: UNAG/9 Personnel

Lt. W.L. Brown
Lt. A. Wilkins
M-36191 Sjt. Lamb, H.
H-46569 A/Sjt. Black, J.K.

1 CIRU Personnel

Lt. W.D. Lowden (1)
H-16160 CSM Hosegood, T. (2)
H-16489 Sjt. Longmuir, W.G. (3)

DRAFT PERSONNEL

Lt. W.L. Brown

K-37179	Pte	Allen, G.J.
L-17041	Pte	Bassett, H.R.
H-46569	A/Sjt	Black, J.K.
G-17423	Cpl	Broad, E.E.
M-104537	Pte	Burleigh, J.C.
K-40984	Pte	Chisholm, A.D.
D-140424	Pte	Collard, T.W.
M-1297	Pte	Crawford, L.R.
H-62791	Pte	Dodd, R.
M-35446	Pte	Durocher, H.
K-75123	Pte	Dykeman, E.C.
K-40139	Pte	Fred, E.
H-18108	Pte	Gordon, W.J.
H-14070	Pte	Grimshaw, S.J.
H-14124	Pte	Henry, C.L.
L-107293	Pte	Hindmarch, P.E.
K-72211	Pte	Hodgson, J.S.
K-66775	Cpl	Irving, J.L.
H-8044	Cpl	Johnson, E.J.
K-65984	Pte	Kennedy, B.C.
K-11244	Pte	Kerr, A.
L-12385	Pte	Kish, P.
L-64520	Pte	Kowzowy, A.
M-105705	Pte	LaFleur, S.N.
M-8412	Pte	Lezanski, M.
L-11254	Pte	Littlejohn, J.J.
M-18099	Pte	Linnell, S.H.
K-1402	Pte	Love, C.E.
H-14645	Pte	Lundin, J.E.

Lt. A. Wilkins

B-116051	Pte	Baskett, L.T.C.
A-105865	Pte	Dissonnette, L.L.
D-114997	Pte	Driard, E.J.
L-66655	Pte	Brown, M.B.
L-27061	Pte	Cauldwell, D.W.
D-142756	Pte	Clark, J.J.
M-49862	A/Sgt	Cranston, J.A.
L-155539	Pte	Cote, J.
H-9660	Pte	Doran, H.J.
M-38612	Pte	Duval, F.G.
K-74574	L/Cpl	Fairbairn, H.T.
H-77204	Pte	Ganly, D.
K-22198	Pte	Grant, C.A.
K-50170	Pte	Hanson, H.L.
H-8934	Pte	Henson, C.S.
L-103571	Pte	Hoffart, A.
M-16099	Pte	Huitt, A.
H-63717	Pte	Jacobson, H.O.
M-105199	Pte	Johnson, N.E.
L-64687	Pte	Kenyon, .D.
M-1546	Pte	Kirk, S.
L-106396	Pte	Kopitoski, G.A.
K-354	Pte	Lavigne, O.J.
M-36191	Sjt	Lamb, H.
M-65433	Pte	Line, H.A.
M-107426	Pte	Litko, R.H.
F-25518	Pte	Long, C.T.
M-56536	Pte	Lyttle, A.
K-46679	Pte	Mansell, R.P.

Lam.

DRAFT CARTING (cont)

H-1426	Pte	Meffen, J.
K-1482	Pte	Mullis, C.C.
F-57744	Pte	MacDonald, A.
M-107317	Pte	MacLeod, R.A.
M-12626	Pte	McCusker, F.C.
B-[illegible]776	Pte	McDowell, R.D.
M-8111	Pte	McIntosh, C.F.
K-719	Pte	McKowan, H.E.
M-[illegible]836	Pte	McLeod, [illegible]
L-64214	Pte	McNeil, [illegible].D.
F-36527	Pte	Naugler, R.S.
K-71253	Pte	Oldershaw, R.F.
M-8844	Pte	Oslund, A.L.
K-46922	Pte	Olynyk, M.P.
L-106217	Pte	Pagan, C.L.
K-1472	Pte	Parker, F.C.
D-74629	Pte	Percival, C.A.
K-1855	Pte	Quissy, G.L.
H-14853	Pte	Reid, E.
M-204597	Pte	Reich, H.H.
M-8427	Pte	Ricker, [illegible].R.
K-574	Pte	Rose, [illegible].E.
M-8517	Pte	Russell, D.[illegible]
L-64794	Pte	Schmidt, F.M.
L-153014	Pte	Scratton, J.H.
M-86999	Pte	Sedgwick, G.
M-107366	Pte	Shupak, J.
L-27384	Pte	Slater, H.T.
M-8616	Pte	Spring, J.K.
L-84091	Pte	Stephens, J.T.
K-62347	Pte	Stirling, R.
K-50809	Pte	Thirsk, S.J.M.
M-31874	Pte	Thompson, J.B.
C-44687	Pte	Tisdale, G.A.
L-106710	Pte	Tolver, R.H.G.
M-8170	Pte	Vladosav, S.
K-1943	Pte	Wallace, H.F.
K-4334	Pte	Williams, N.E.
M-8900	Pte	Williams, H.T.
M-75998	Pte	Wittich, A.L.
K-50084	Pte	Woodbury, J.E.
L-105463	Pte	Wright, L.E.
K-1971	Pte	Wynnychuk, W.A.
H-14522	Pte	Yvon, G.
M-38608	Pte	Zlomanchuk, M.F.
D-144490	Pte	Morrison, J.R.
B-131171	Pte	Murray, J.
F-56580	Pte	MacKinnon, O.J.
D-142159	Pte	McCrea, H.
K-2128	Pte	McDonald, J.A.A.
D-140352	Pte	McGarr, J.D.
M-11837	Pte	Mc Kenzie, G.L.
K-168	Pte	McLarry, B.F.
H-195709	Pte	McMillan, A.R.
B-116548	Pte	McRae, J.A.
D-135112	Pte	O'Connell, M.P.
B-145693	Pte	O'Leary, L.
L-51454	Pte	Ottenbreit, G.
M-10624	A/Sjt	Oxley, J.T.
K-1865	Pte	Pargee, E.O.
L-153020	Pte	Pfiefer, [illegible].A.
L-107084	Pte	Power, D.S.
L-27775	Sjt	Read, D.J.
L-107062	Pte	Reich, H.
K-1908	Pte	Rosch, [illegible].C.
K-92476	A/L/Sjt	Richardson, D.H.
L-12139	Pte	Rustulka, C.
L-27571	L/Cpl	Sayers, S.H.
L-103804	Pte	Schreiner, J.
B-116571	Pte	Seckington, [illegible].R.
K-50835	Pte	Sokulich, F.N.
L-154062	Pte	Silvius, M.
M-8105	Pte	Steadman, G.D.
H-42004	Pte	Stabner, H.
M-39652	Pte	St. Laurent, R.
B-146933	Pte	Syas, G.
C-123641	Pte	Thomas, R.
K-4389	Pte	Thompson, J.F.
H-14994	Pte	Thrift, D.H.
H-18799	Pte	Vancoughnott, [illegible].A.
L-101241	Pte	Vasdon, H.D.
M-8839	Pte	Watson, L.A.
L-103732	Pte	Williams, L.H.
M-8622	Pte	Willmer, N.M.
K-1550	Pte	Wilson, J.A.
K-4188	Pte	Tron, [illegible].J.
H-1998	Pte	Wilson, C.G.
L-8671	Pte	Young, G.D.
H-38912	Pte	Zahara, J.
M-39624	Pte	Zuber, [illegible].M.

Kenneth A. McKenzie, Lieut.
for (S.V. Fowler) ~~Capt.,~~ Adjutant,
1 Cdn Inf R Inf Unit.

13 Oct 44

Certified true copy
Kenneth A. McKenzie, Lieut.
2 pdg. No 1 C.I.R.U.

JHB

EX. G

Page 1

MONTREAL BOLT

UKAC-9

23 Sep 44

NUMBER	RANK	NAME	QUALIFICATIONS
	Lieut.	W.T. Brown	
	Lieut.	A. Wilkins	
K37179	Pte.	Allen C. J.	Dvr 1/c
B116051	.	Baskett L.T.C.	Dvr 1/c
L17041	.	Bassett W.R.	C.D.
A105865	.	Bissonnette L.G.	C.D.
H46569	Cpl A/Sgt	Black J.K.	D/Mech
D114907	Pte.	Briard E.J.	C.D.
C17423	Cpl.	Broad T.E.	C.D.
L66655	Pte.	Brown W.E.	C.D.
M104537	.	Burleigh J.C.	C.D.
L27061	.	Cauldwell C.F.	Bricklayer C
K40934	.	Chisholm A.D.	C.D.
D142756	.	Clark J.J.	D/Mech
D140824	.	Collard T.W.	D/Mech
M40862	Pte A/Sgt	Cranston J.A.	Clerk C
M2207	Pte.	Crawford L.R.	C.D.
L155539	.	Cote J.	C.D.
K62701	.	Dodd R.	D/Mech
M9660	.	Doran H.J.	Dvr 1/c
M25446	.	Durocher M.	3" Mortar
M28612	.	Duval W.C.	Dvr 1/c
K75123	.	Dykeman E.C.	M/Mech
K84594	L/Cpl	Fairbairn W.T.	Storeman C
K40130	Pte.	Fred T.	Dvr 1/c
M22004	.	Gaply G.	Dvr 1/c
M18108	.	Gamble W.J.	C.D.
K52198	.	Grant C.A.	Clerk C
M14070	.	Grimshaw C.J.	Dvr 1/c
K50170	.	Hanson C.L.	Dvr 1/c
M14104	.	Henry G.E.	Dvr 1/c
MF034	.	Henson C.C.	C.D.
L107203	.	Hindmarch W.E.	C.D.
L103971	.	Hoffart A.	C.D.
K72511	.	Hodgson J.T.	D/Mech
M16899	.	Huitz A.	Dvr 1/c
K66775	Cpl.	Irvin J.E.	C.D.
H63717	Pte.	Jacobson N.O.	D/Mech
MF044	Cpl.	Johnson K.J.	C.D.
M105199	Pte.	Johnson W.E.	C.D.
K65988	.	Kennedy S.C.	Dvr 1/c
L64687	.	Kenyon W.D.	M/Mech
M11244	.	Kerr A.	Dvr 1/c
M1546	.	Kirk S.	Shoemaker B
L12385	.	Kish P.	C.D.
L106396	.	Kopitoski C.A.	C.D.
L64520	.	Kozmovy A.	C.D.
K356	.	Lavigne O.J.	Dvr 1/c
M105205	.	LaFleur C.E.	C.D.
M6191	Capt.	Laub W.	Storeman C
MF412	Pte.	Lezanski W.	D/Mech
M65433	.	Line W.L.	C.D.
L11254	.	Littlefield J.J.	C.D.
M107206	.	Litke R.R.	Dvr 1/c
M10099	.	Linnell C.R.	3" Mortar
K55510	.	Long C.E.	Dvr.
M1402	.	Love C.G.	Dvr Mech
M56536	.	Lyttle A.	C.D.
M14645	.	Lundin J.E.	Dvr 1/c
K46679	.	Mansell H.P.	Dvr 1/c

HEAC/9 Cont'd

M1426	Pte.	Yeffen J.	Dvr i/c
D144490	.	Morrison J.R.	G.D.
K1482	.	Mullis C.C.	D/Mech
B131171	.	Murray J.	Dvr i/c
M87744	.	MacDonald A.N.	G.D.
M86580	.	MacKinnon C.J.	Clerk C
M107217	.	MacLeod R.A.	G.D.
B142159	.	McCann H.	6 Pdr.
M12636	.	McCusker F.C.	G.D.
K2158	.	McDonald J.A.A.	Dvr i/c
B158576	.	McDowell R.D.	G.D.
B140352	.	McGarr J.D.	D/Mech
M7111	.	McIntosh C.F.	3" Mortar
M11837	.	McKenzie G.L.	G. D.
K779	.	McKeown H.E.	Dvr i/c
K168	.	McLarney T.P.	Dvr i/c
M85836	.	McLeod W.	Clerk C
M105709	.	McMillan A.B.	G.D.
L64114	.	McNeil C.D.	G.D.
M116948	.	McRae J.A.	6 Pdr.
M36827	.	Mauzler R.B.	G.D.
B135112	.	O'Connell M.P.	G.D.
K71253	.	Oldershaw R.F.	G.D.
B145693	.	O'Leary L.	G.D.
M8844	.	Oslund A.E.	6 Pdr.
L51454	.	Ottenbrait C.	G.D.
K46922	.	Olynyk M.P.	D/Mech
M10624	Cpl A/Sgt	Oxley J.T.	G.D.
L106217	Pte.	Pagan C.H.	Dvr i/c
K1865	.	Pargee E.O.	Dvr i/c
K1472	.	Parker F.C.	Dvr i/c
L153020	.	Pfiefer W.A.	Dvr i/c
B74629	.	Percival C.A.	G.D.
L107084	.	Power D.S.	Dvr i/c
K1855	.	Quisay C.D.	6 Pdr.
L27775	Sgt.	Read E.J.	Dvr i/c
M14853	Pte.	Reid E.	G.D.
L102062	.	Reich H.	Clerk C
M204597	.	Reich H.H.	D/Mech
K1908	.	Resch W.G.	6 Pdr.
M6427	.	Ridler L.B.	3" Mortar
M90476	A/C./Pte	Richardson D.H.	D/Mech
K574	Pte.	Rose E.K.	D/Mech
L102139	.	Rustalka C.	6 Pdr.
M5017	.	Russell D.W.	D/Mech
L27271	L/Cpl	Sayard C.M.	G.D.
L64704	Pte	Scheidt F.K.	Dvr i/c
L103804	.	Schreiner J.	G.D.
L153014	.	Scratton J.W.	G.D.
B116971	.	Sackington W.R.	6 Pdr.
M66999	.	Sedgwick C.	D/Mech
K50835	.	Sekulich F.D.	Dvr i/c
M107366	.	Shunak J.	G.D.
L154062	.	Silvius M.E.	G.D.
L27384	.	Slater H.T.	Motor Cycles
M8105	.	Steadman C.D.	Dvr i/c
M8616	.	Spring J.K.	D/Mech
H42004	.	Stabner H.	Dvr i/c
L64091	.	Stephens J.T.	M/Mech
M19652	.	St Laurent R.	G.D.
K62347	.	Stirling B.	Dvr i/c
B146933	.	Syms C.	6 Pdr.
K50809	.	Tirsk S.J.D.	Dvr i/c
C123641	.	Thomas R.W.	G.D.
M31174	.	Thompson J.D.	G.D.
K4389	.	Thomson J.F.	G.D.

RWAC/9 Cont'd

C44687	Pte.	Tisdale [illegible].A'	C.D.
M14904	"	Thwist D.W.	C.D.
L106710	"	Tolver R.W.G.	3" Mortar
M18799	"	Vancoughnett W.A.	Dvr i/c
M8170	"	Vladosay S.	C.D.
L101241	"	Waeden W.D.	D/Mech
M1943	"	Wallace W.P.	6 Pdr.
M8639	"	Watson L.A.	San Duties
K4314	"	Williams A.E.	C.D.
L103732	"	Williams L.W.	C.D.
M8900-	"	Williams W.T.	6 Pdr.
M8628	"	Willmer W.W.	C.D.
K75908	"	Wittich A.L.	C.D.
M1550	"	Wilson J.A.	C.D.
K50834	"	Woodbury J.B.	C.D.
K4180	"	Wren W.J.	C.D.
L105463	"	Wright L.E.	D/Mech
M1998	"	Wilson C.G.	C.D.
M1971	"	[illegible]uk W.A.	6 Pdr.
L8671	"	Young C.D.	Dvr i/c
M14822	"	Yvon C.	C.D.
M38912	"	Zahara J.	C.D.
M38608	"	Zlomanchuk W.P.	C.D.
M39624	"	Zuber W.W.	C.D.

Nat'B

JWP

SUMMARY OF EVIDENCE Ex. "H" Page 1.

In the case of L-12139 Pte. Rustulka, C., South Saskatchewan Regiment, on the strength of No. 1 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on Oath.

FIRST WITNESS for the PROSECUTION

H-16489 Sgt Longmuir, W.G., Princess Patricia's Canadian Light Infantry on the strength of No. 1 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, having been duly sworn states as follows:
I am H-16489 Sgt Longmuir, W.G. I am employed as a clearing N.C.O. on the Training Increment of F Coy, No. 1 Canadian Infantry Reinforcement Unit. I was present on a parade held at 1300 hrs on 27 Sep 44 for the purpose of warning personnel proceeding on draft. L-12139 Pte. Rustulka, C. was on that parade. I know his name was on the nominal roll for draft and I also know that no one whose name was on the said nominal roll was absent from this warning parade. I know for certain that a man of his name and number was on the warning parade and answered when "Pte. Rustulka" was called and replied by saying "L-12139" "C", thus giving his number and his initial. The parade, after it was ascertained that all were present, were warned by Capt. W.G. Burgess in the following words: "You have been selected to proceed on a draft for the performance of a special duty and you are now warned that you must be present and ready to go when the draft is sent off. Any unauthorized failure on your part to go with the draft when it leaves will result in you being charged with desertion on active service. Similarly any unauthorized absence on your part while the draft is in transit or at any intermediate point before its final destination will result in you being charged with desertion on active service. If you are convicted of desertion the court has the power to sentence you to a maximum sentence of penal servitude for life. At some time prior to the departure of the draft a parade will be called on which you must be present and at which time the exact date and time of departure will be told you." Capt. Burgess also warned this parade that they were confined to barracks. He repeated "Confined to Barracks". The warning was given clearly and distinctly. I was standing behind the parade and could hear the warning distinctly.

The accused declines to cross-examine this witness.

W.G. Longmuir Sgt
(W.G. Longmuir) H-16489.

SECOND WITNESS for the PROSECUTION

H-16160 C.S.M. Hosegood, T., Princess Patricia's Canadian Light Infantry, on the strength of No. 1 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, having been duly sworn states as follows:
I am H-16160 C.S.M. Hosegood, T., and am employed as C.S.M. of F Coy, No. 1 Canadian Infantry Reinforcement Unit. F Coy is the Coy which prepares men to be sent on draft to the field. L-12139 Pte. Rustulka was in F Coy on 27 Sep 44 and on that date at approximately 1300 hrs a draft warning was read by Capt. Burgess. Pte. Rustulka answered his name by giving his name and number. I heard him answer in this manner. He then fell out of the squad and fell in on the right in a squad which a Sgt was forming in a hollow square. The warning order for draft was then read to this squad including the said Pte. Rustulka by Capt. Burgess. The men were warned for special duty and that they would proceed on a draft and that they would be ready to proceed on draft from then on and any failure to be present and ready to proceed or such failure at any intermediate point before the destination was reached, would result in them being charged with desertion on active service. They were also warned that they would be confined to Barracks until the

Ex. H Page 2

SUMMARY OF EVIDENCE

In the case of L-12139 Pte. Rustulka, C., South Saskatchewan Regiment, on the strength of No. 1 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on Oath.

SECOND WITNESS for the PROSECUTION (Continued)

draft left. I was standing behind the parade and heard quite clearly and distinctly everything that Capt. Burgess said.

The accused declines to cross-examine this witness.

(T. Hosegood) CSM M-10160

THIRD WITNESS for the PROSECUTION

Capt. W.G. Burgess, Regina Rifle Regiment, on the strength of No. 1 Canadian Infantry Reinforcement Unit, a n officer of the Canadian Army Overseas, having been duly sworn states as follows:-

I am Capt. W.G. Burgess, 2 i/c of F Coy, No. 1 Canadian Infantry Reinforcement Unit. I am employed as Draft Officer and as such am in charge of preparing outgoing drafts to the field from this Unit. On 27 Sep 44 at approximately 1300 hrs I called a nominal roll of Draft UKA0/9. All the personnel whose names I called answered by giving their regimental number and initials. There were no absentees from this roll-call. After answering their names the men moved to the right of the parade and were formed into a hollow square by a Sgt. When I called the name "Rustulka" a man answered with his regimental number and initial which I checked with the nominal roll. When the roll-call had been completed and a new parade formed up on the right, I placed the witnessing officers and NCOs in the rear of this parade. I then read the draft warning. I produce the nominal roll which I called on that parade and the draft warning order which I read to the personnel on that parade. This document is marked Exhibit "A" and initialled by me for purposes of identification. I further warned this parade that they were confined to barracks until the time of movement.

The accused declines to cross-examine this witness.

(W.G. Burgess) Capt.

FOURTH WITNESS for the PROSECUTION

M-15894 Sgt Benson, T.R., Loyal Edmonton Regiment, on the strength of No. 1 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this Summary of Evidence, and marked Appendix "A".

"I am M15894 Sgt Benson, T.R. I am employed as a clearing NCO on the Training Increment of F Coy 1 CIRU. L12139 Pte. Rustulka, C. was in my squad. Pte. Rustulka, was present on a parade at 1300 hrs 27 Sep 44 when the draft warning was read by Capt. Burgess. The draft was also warned that they were C.B. from the reading of the warning. Pte. Rustulka was absent from inspection parade at 1045 hrs on the 28 Sep 44. He was absent from the draft pay parade which was at 1400 hrs 28 Sep 44.

Signed: M15894 Sgt Benson, T.R."

Having regard to the loss of time involved the attendance of this witness cannot in my opinion be readily procured.

(R.B. Allan) Lieut. Officer detailed to takt the Summary of Evidence.

SUMMARY OF EVIDENCE

In the case of L-12139 Pte. Rustulka, C., South Saskatchewan Regiment, on the strength of No. 1 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on Oath.

FOURTH WITNESS (Continued) for the PROSECUTION — The accused does not demand the attendance of this witness for cross-examination.

FIFTH WITNESS for the PROSECUTION — Lieut. K.A. McKenzie, Canadian Infantry Corps, on the strength of No. 1 Canadian Infantry Reinforcement Unit, an officer of the Canadian Army Overseas, having been duly sworn states as follows:

I am Lieut. K.A. McKenzie, Acting Adjutnt of No. 1 Canadian Infantry Reinforcement Unit. I produce Part I Order No. 2420 dated 26 Sep 44 published by this Unit which relates to L-12139 Pte. Rustulka, C. This document is marked Exhibit "B" and initialled by me for purposes of identification.

The accused declines to cross-examine this witness.

K.A. McKenzie Lieut.
(K.A. McKenzie)

SIXTH WITNESS for the PROSECUTION — G-18154 L/Cpl Brayall, M., Canadian Infantry Corps, on the strength of No. 1 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, having been duly sworn states as follows:

I am G-18154 L/Cpl Brayall, M. and am employed as an NCO of the Regimental Police, No. 1 Canadian Infantry Reinforcement Unit. At approximately 1115 hrs on 10 Oct 44 I was NCO in charge of the Guard Room of this Unit when Pte. Rustulka, C. whom I now recognize surrendered to me. I took his personal belongings from him and placed him under arrest. He was sober, clean-shaven and properly dressed.

The accused declines to cross-examine this witness.

M Brayall L/Cpl
(M. Brayall) G-18154

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence."

The Accused elects to make a statement:

L-12139 Pte. Rustulka, C., South Saskatchewan Regiment, on the strength of No. 1 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, states:

I am not guilty of desertion.

C Rustulka Pte.
(C. Rustulka) L-12139

I certify that the foregoing Summary of Evidence consisting of three pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c), (d), (e), (f) and (g) have been complied with.

R.B. Allan Lieut.
(R.B. Allan) Officer detailed to take the Summary of Evidence.

In the Field,

13th day of October, 1944

Ex. 1

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
L-12139	Private	Carl RUSTULKA	S.S.R., 1 C.I.R.U.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 607, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months	* Since Enlistment
For AA.15(1)	3 times	16 times
For AA.40	1 times	1 times
For	times	times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct:~~ ~~nil~~

~~There are no entries in the conduct sheets of the accused.~~

2. ~~The accused has not been previously convicted, or~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, ~~or The accused at the present time is under sentence for~~ ~~nil~~ ~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in civil custody, and 10 days in military custody, making a total of 10. days, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 23 years

6. The date of his ~~confirmation~~ attestation specified in his ~~record of service~~ attestation paper is 17 Sep 1939

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 yrs 109 das

8. The accused is entitled to deferred pay or gratuity in respect of above service.

9. The accused is entitled to reckon above service for the purpose of determining his pension, etc.

10. The accused is in possession of, ~~or entitled to, no military decoration or military award (or is in possession of or entitled to~~ (*state any military decoration or reward*).

~~11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of~~ ~~nil~~ of

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated ~~and in his regiment (or corps or department) the rank of dated~~

W.L.5/637/1519 20M. 5/44. P. Ltd. T.31-5.

JMB

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. L-12139 *Rank* Private *Name* Carl RUSTULFA of S.O.R. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
F.G.C.M.	25 Aug 41 Field		126 days Detention	43 days

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 20th day of October

J. B. Baird Lieut.
(J. B. Baird) Asst Records Officer.

~~Should the accused have served as a non-commissioned officer continuously without reduction to the present date~~

In the rank of ~~.....~~ years.

In the rank of ~~.....~~ years.

In the rank of ~~.....~~ years.

Date of Promotion

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, words to that effect inserted, and the matter verified by a report by field general court-martial (or information was not available and the reason why it is not available must be stated).)

EX. "J"

No. L12139 Name RUSTULKA, C. Sqn, Battery, or Company — Corps Cdn Inf Corps — Date of enlistment 19 Sep 39 — Badges — Service or Proficiency Pay — 3/17 MFM 6 (AFB 122) 40/PAS/1564(9881)

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No One — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				ENTRIES FROM MFM.4 - MFM.6 NOT AVAILABLE					
Weyburn		Pte		AA.15(1) AWL			6-2-40	DO 38	Forf 6 days pay FR&I
Weyburn		Pte		AA.15(1) AWL			24-4-40	DO 117	Forf 2 days pay FR&I
Shilo		Pte		AA.15(1) AWL			4-6-40	DO 156	Forf 2 days pay FR&I
Shilo		Pte		AA.15(1) AWL		15 days Detn	24-6-40	DO 175	Forf 21 days pay FR&I
Shilo		Pte		AA.15(1) AWL			24-7-40	DO 205	Forf 2 days pay FR&I
Shilo		Pte		AA.15(1) AWL		144 hrs Detn	9-8-40	DO 221	Forf 9 days pay FR&I

(PTO)

Place	Date of offence	Rank	Corps of regiment-ation	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order convening trial	By whom awarded	Remarks
Field		Pte				126 days Detn	25-8-40	DO 60 FGCM	Forf 140 days pay FR&I
				Granted remission of 43 days with pay wef 15-11-41 (DO 282(Supp 1) d/l Dec 41)					
Field		Pte		AA.15(1) AWL 3 hrs 10 mins			17-3-42	DO 22	Forf 8 days pay FR&I
Field		Pte		AA.15(1) AWL		14 days F.P.	25-8-42	DO 64	Forf 22 days pay FR&I
Field		Pte		AA.15(1) AWL 11 hrs 35 mins		8 Days Detn	6-10-42	DO 77	Forf 9 days pay FR&I
Field		Pte		AA.15(1) AWL 25 Oct - 27 Oct		14 days Detn	28-10-43	DO 84	Forf 17 days pay FR&I
Field		Pte		AA.15(1) AWL 23 hrs		168 hrs Detn	10-5-43	DO 32	Forf 8 days pay FR&I
Field		Pte		AA.15(1) AWL		7 days C.B.	13-9-43	DO 57	Forf 7 days pay FR&I
Field		Pte		AA.15(1) AWL			15-11-43	DO 67	Forf 9 days pay FR&I

Ex. J.

No L12139 Name RUSTULKA, C. | Sqn, Battery, or Company | Corps Cdn Inf Corps | Date of enlistment 17 Sep 40 (Bridge) | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/120 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Pte		AA.15(1) AWL		10 days C.B.	29-12-43	DO 2	Forf 7 days pay FR&I
Field		Pte		AA.40 Conduct to the Prej etc		7 days F.P. 7 days Pay	4-2-44	DO 9	Forf 7 days pay FR&I
Field		Pte		AA.15(1) AWL		28 days F.P.	7-3-44	DO 15	Forf 21 days pay FR&I

CERTIFIED TRUE COPY CONSISTING OF TWO PAGES
DATE: 20 Oct 44
...J.R. Baird...Lieut.
(J.R. Baird)
Officer in charge of Regimental Books

(PTO)

4X-49

Pte. Ruszczak JJ

RECORDED AT CMHQ IN A.G. 160. 4/8/49

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA81)
40/P & B/1698 (B1144)
4/38B

RECEIVED
JAG BRANCH

Convened by Order of Brigadier K G Blackader DSO, MC, ED Comd 13 CITB dated 14 Feb 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
A-130957	Pte	Joseph Jacob	RUSZCZAK	CIC 5 CITR

PROCEEDINGS REVIEWED
J. Kellgerblan Capt.
2 Mar 45
REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) England on (*date(s)*) 16 FEB 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 33, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1020 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~

~~The Interpreter is sworn.(1)~~ Do you object to PTE/CPL SINCLAIR as shorthand writer? Ans NO
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT COL	J. L. REDMAN	11 CRU
Member	CAPT	J. H. MEDHURST	2 CITR
Member	LT	A. CONTENT	4 CITR
Judge-Advocate			
Prosecutor	LT	E. J. McCORMICK	5 CITR
Defending Offr	CAPT	F. C. PETERS	5 CITR

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 69 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) (a) plea ..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use sepa. ate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO - S I R (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement (1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex II, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing at Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO - SIR (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (his) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 97(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1) NOTE - ATT
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ..... Do you intend to call witnesses on your behalf ? Ans NO - SIR Are they witnesses as to character only ? — Ans .....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans NO - SIR
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 5 and Ex 6, respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM a. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Brief Words (NOTE AT T)(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 89, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A-118257 Pte Joseph Jacob RUSZCZAK - CIC - 5 CITR

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 9 (2)	NOT GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... ~~beginning on (date)~~ ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital. (1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
To undergo Detention for a period of twenty Eight (28) days.

(Sgd) ..... Judge-Advocate, if any. 16 FEB/45 Date awarded. (Sgd) [signature] President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I ~~direct that the accused be not committed to prison or detention barracks until further orders~~ (1) ~~This~~
(1. AA 57A. ~~Delete if not used.~~)

(Sgd) [signature]

Date 18 Feb 45

Commanding 5 Bn (Inf) Tp. Bde. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
A-118257 Pte. RUSZCZAK, J.J.	19 Feb 45 (5 CITR Pt II D.O. No 46 d/21 Feb 45)	[signature] Adjt., Depot Bn 5 C.I.T.R.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

A C C U S E D E L E C T S T R I A L

CHARGE SHEET

The accused, No. A. 118257, Private Joseph Jacob RUSZCZAK, Canadian Infantry Corps, No 5 Depot Battalion, No 5 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas, is charged with:--

CHARGE
SEC. 9 (2)
Army Act

WHEN ON ACTIVE SERVICE DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

in that he in the Field at 1330 hours on the 7th February, 1945, when ordered by Captain H.W. McIntosh, RCAMC, a medical officer attached to No 5 Canadian Infantry Training Regiment, to submit to inoculations did not do so.

Col.

(J. M. Meldram)
Officer Commanding
No 5 Canadian Infantry
Training Regiment

In the Field,
10th February, 1945

To be tried by Field General Court Martial.

(K G Blackader) Brig
Comd
13 Cdn Inf Trg Bde

In the field
14 Feb 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
A-118257	Pte		Joseph Jacob	RUSZCZAK	CIC 5 CITR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person[X] named above as the accused, being subject to military law, has [XXX] committed the offence[X] set forth in the Charge Sheet[X] attached and on (date) 14 Feb 45 endorsed by me, [XXXXXXXXXXXXXXXXX] "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence[X] should be tried by an ordinary General Court-Martial; [XXXXXXXXXXXXXXXX

16 Feb 45.

MEDICAL OFFICER'S CERTIFICATE

I certify that No. A-118287, Private Joseph Jacob RUSZCZAK, CIC, No. 5 Depot Battalion, No. 5 Cdn Inf Trg Regt, CAO, is in a fit state of health and is fit to undergo trial by Court Martial.

Capt.
Signature of Medical Officer
R.C.A.M.C. Att'd 5 C.I.T.R., C.A.O.

CASE OF

A.[illegible] Pte RUSZKIAK JJ 1 CITA

PROSECUTION

FIRST WITNESS

Capt W. McINTOSH, 5 CITA, having been duly sworn, states:

I recognise the accused, and on 7 Feb 45 at about 1330 hrs I was on duty in the Med Inspection Room 5 CITA, and I saw the accused and told him it would be necessary for him to submit to needles and he said "I'm not taking any needles". I then called Pte Swanston, the med orderly, into the office and I then explained to the accused the reason for taking inoculations and further explained to him that he would be disobeying a lawful order if he refused to take them and asked him if he understood what I told him and he said he did and he repeated that he was not taking any needles and refused to take the needles. He was then taken away. He wasn't inoculated, and I gave him time to comply with the order.

CROSS-EXAMINED

Q. Would you say in his refusal that he was behaving in such a manner to be detrimental to his own good behaviour?

A. The refusal was polite, and there was no insolence.

QUESTIONS BY THE COURT:

Q. Did you him a direct order or was it merely conversation?

A. I gave him a direct order, Sir.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RR 85(5).

ACCUSED WITNESS

B.64403 Pte SWANSTON, 5 CITA, having been duly sworn, states:

On 7 Feb at 1330 hrs the accused whom I now recognize, came to the RAP and was told he was to have shots in the arm. The MO told him this and he refused. The MO called me in and explained to the accused of the things that would be detrimental to him if he didn't take the shots and the accused said he was not going any shots in the arm and after that was passed out of the RAP. I mean by shots, inoculations. I heard the MO give him a direct order. He said "you will take the needles now" and the accused refused saying "I am not taking any needles" and he didn't take the needles, and he was given time to comply with the order before being taken out.

CROSS-EXAMINED

Q. Was there any insolence on the part of the accused?

A. No.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RR 85(5).

WITNESS EXTRACT

Capt MW CHRISTIE, RCAMC, att 8 CITH, having been duly sworn, states:

I recognize the accused, and I examined him about 1C.30 on 1C Feb 45 and examined his Service Book and asked him medical questions regarding his past history and found nothing to indicate that inoculations might in any way injure his health.

CROSS-EXAMINED

Q. On the occasion did the accused appear insubordinate or insolent?
A. No.

Q. Are you a fully qualified physician?
A. Yes.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO CONSIDER SITH AS 86(2)

THE PROSECUTION PRODUCED C.R.O. 1809.

C.R.O. 1809 MARKED EXHIBIT 1

THE PROSECUTION IS CLOSED

- D E F E N C E -

The accused, having been duly sworn, states:

I previously have had inoculations and didn't feel well from them. I had headaches and a ringing sound in my head and I seen circles and colors and couldn't sleep well at night and it still comes back on me once in a while. Before I was inoculated I never had these symptoms, and I don't think these inoculations do me any good at all, in fact I think they do me harm.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO CONSIDER SITH AS 86(2)

STATEMENT BY THE PROSECUTOR AT THE FINDING

In 1951, p. 444, there is a statement by the effect that an accused cannot be punished for refusing to submit to an inoculation and I will read this to the Court (Pros reads this section), but that is the opinion of the person who wrote the note in the book and as I understand the law we take this AA and its notes for what they are worth, not if they conflict with our own law. That it conflicts I submit is shown in O.R.O. 1609, and I claim that this has the authority of PC 634. (Pros quotes the order). In this case while the onus was on the accused to prove it would be detrimental to his health the prosecution has brought a witness that it would not be, and it would appear that the defence of his health has been answered and the defence of religion has not been raised. That is all, Sir.

STATEMENT BY THE PRESIDENT OF THE COURT

A point I would like to bring up is mentioned in the order cited. In regard to the unreasonable refusal to submit to inoculation to be inoculated. Is ~~shim~~ it is unreasonable in the medical or if it would be unreasonable by the mental board within the mental body of the accused. The accused is a volunteer, has had previous inoculations and has told the effect of them on him. He has done nothing prejudicial to his good behaviour at the time and there was no insolence shown, and I would like to bring in the point that the frame of this man's mind is such, whether or not the inoculations are detrimental to his good health, he thinks they are , and simply feels that they don't do him any good and has that thought fully placed in his mind that it is dangerous to him.

THE COURT IS CLOSED TO CONSIDER THE FINDING

THE COURT IS REOPENED.

PLEA IN MITIGATION
(BY INVESTIGATING OFFICER)

In view of the fact that the accused has elected trial by Court May his punishment be only such as he would receive from his CO and in consideration of any punishment awarded to accused I request that the court take into consideration the high tension psychologically of this man. I believe the answer can be found if this man was submitted to psychiatrist for examination. He was sincere in his belief that the innoculation would be harmful to him. I do not believe that at any time it was the mans' intention to clog up the wheels of justice but he has done this to show that his refusal was apparently for a reason other than ~~xx~~ seen onthe surface. The accused has spent 7 days in confinement awaiting this trial, this should be taken into consideration in awarding ~~sentence~~ sentence.

THE COURT IS CLOSED TO CONSIDER ITS SENTENCE.

SUMMARY OF EVIDENCE

In the case of No. A. 118257 Private Joseph Jacob RUSZCZAK, Canadian Infantry Corps, No. 5 Depot Battalion, No 5 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas, charged with disobedience of a lawful command given by his superior officer (AA Sec 9 (2))

By direction of the Commanding Officer the evidence is taken on oath.

First Witness

FIRST WITNESS Captain Hamish William McINTOSH, Royal Canadian Army Medical Corps, Attached to 5 Canadian Infanty Training Regiment, Canadian Army Overseas, having been duly sworn states;

" At 1330 hours on 7th February , 1945 while on duty as medical officer at the medical inspection room of 5 Canadian Infantry Training Regiment, Canadian Army Overseas, I told the accused No. A. 118257 Private Joseph Jacob RUSZCZAK (whom I now recognize) that he was then required to submit to inoculations. He replied " I am not taking any needles". I then called No. B. 64403 Private Leslie MacDonald SWANSTON into my office and in the presence of the said Swanston, explained to the accused the reasons for inoculations and further explained that the accused would be disobeying a lawful command were he to refuse after being ordered to submit to inoculations. I then asked the accused if he understood what I had just said. He replied " Yes". I then said to the accused. " You will take the inoculations now." The accused then replied " I am not taking any needles". He, the accused, did not submit to the inoculations although he was given ample time to comply with the order so to do.

The accused declined to cross-examine.

H. W. McIntosh Capt.

R.C.A.M.C. Att'd. 5 CITR.

Second Witness

SECOND WITNESS No. B. 64403 Private Leslie MacDonald SWANSTON, 5 CANADIAN INFANTRY TRAINING REGIMENT, Canadian Army Overseas, having been duly sworn states;

At 1330 hours on 7th February, 1945, I was on duty in the medical inspection room at 5 CITR when I heard No. A. 118257 Private Joseph Jacob RUSZCZAK, (whom I now recognize as the accused) asked by the medical officer on duty , Capt. H. W. McIntosh, the first witness, to submit to inoculations. The accused replied " I am not taking any needles". The said medical officer then explained to the accused the reasons for inoculations and that the accused would be disobeying a lawful command if he were to refuse to submit to inoculations. The said medical officer then ordered the accused in the following words:" You (meaning the accused) will take these inoculations now." The accused thereupon said " I refuse to take any needles" The accused did not submit to inoculations as ordered and was removed from the medical inspection room by an N.C.O.

The accused declined to cross-examine

L. M. Swanston Pte.

5 CITR

Third Witness

THIRD WITNESS. Captain Maurice William CHEPESIUK, Royal Canadian Army Medical Corps, attached to 5 Canadian Infantry Training Regiment, Canadian Army Overseas, having been duly sworn states;

At 1035 hours on 10th February 1945, while on duty in the medical inspection room at 5 Canadian Infantry Training Regiment, Canadian Army Overseas, I personally examined the service book and past medical history of No. A. 118257, Private Joseph Jacob RUSZCZAK, (whom I now recognize as the accused) and now certify that it is very unlikely that the proposed inoculations would be injurious to the health of the said accused. I am fully qualified physician and am a medical officer at 5 Canadian Infantry Training Regiment. C.A.O.

The accused declined to cross-examine.

M W Chepesiuk Capt.

RCAMC Att'd 5 CITR.

Question to the accused----

Do you wish to make any statement or to give evidence upon oath ? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer by accused---

I have nothing to say.

The accused declined to call any witnesses.

I certify that Rules of Procedure 4 (C), (D), (E) and (F) have been complied with and that this Summary of Evidence consisting of this and the one preceding page was taken down by me in the presence of the accused, and that the evidence of the first two witnesses was taken down on the 9th February 1945 and the evidence of the third witness was taken down this 10th February, 1945.

E J McCormick

(E. J. McCormick, Lt)
5 CITR CAO Officer detailed to take the Summary of Evidence.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number	Rank.	Name.	Regiment (or as the case may be).
A. 118257	Private	RUSZCZAK	CIC, 5 CITR C A O

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers here stated should correspond with the number of Entries in the Field Conduct Sheet, provision being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Absence without leave — 3 times.

For Neglect (no shave on parade) — 1 times.

For Neglect (dirty rifle) — 1 times.

For Loss of kit (neglect) — 1 times.

Date of first entry in Field Conduct Sheet 26 Sept 43

Date of last entry in Field Conduct Sheet 17 July 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf. Nil.

*Strike out if not applicable.

*3.—He was not at the present time is under sentence for—

—beginning on the [illegible] day of—

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 7 days in military custody, *i.e.*, nil days in open arrest, 7 days in close arrest; of which nil days were spent in hospital. Days in open arrest nil. Days in close arrest 7

5. The present age of the accused is 20 yrs 6 mons. Total 7

6. The date of his ~~attestation~~ is 30 Jun 43

~~7. He was [illegible]~~

†State the military decorations (if any) held by accused.

8. The accused is in possession of† Canadian Volunteer Service Medal

~~9. (a) He was [illegible]~~

~~without [illegible]~~

~~In the [illegible]~~

~~In the [illegible]~~

~~In the [illegible]~~

EX B

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(72072) Wt.30721/3701 82,000 9.44 A.S.E.W.Ltd. Gp.A96

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
Nil				

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 6th day of February 1945

A Fowler Major
Regt No 165 CWH

No. A118257 Name Joseph Jacob Ruszczak Sqn, Battery, or Company Corps CIC Date of enlistment 30 June 43 (Days) CC Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40/P&S/130 (7010)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. one | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
				Old sheet destroyed (6mo's) certified (1) Regt'l entry				Lieut. T/Adjt	
Dundurn	27/9/43	Tpr		1st Charge : Neglect to the prejudice of good order and Military discipline, in that he appeared on parade without being shaved.	Lieut C.J. Pratt	168 hrs detention	28/9/43	J.A. MacDonald Lt.Col	
				2nd Charge : Neglect to the prejudice of good order and Military discipline in that he appeared on parade with a dirty rifle.	Lieut C.J. Pratt	168 hrs detention (concurrently)	28/9/43	J.A. MacDonald Lt. Col.	
Dundurn	29/12/43	Tpr		A.W.L. from 2359 hrs 29/12/43 to 0130 hrs 6/1/44. Absent 7 days, 1 hour, 31 mins.	Documentary	8 days C.B.	6/1/44	J.A. MacDonald Lt.Col	8 days pay Sec 46 (2)(d) 8 days pay R&I 149(1)(a)

Place	Date of Offence	Rank	Corps of Accused	Offence	Name of Witness	Punishment awarded	Date of award of punishment	By whom awarded	Remarks
Dundurn Sask	22 Feb 44	Tpr		Wilfully injuring public property Sec 24 (4)	Cpl Shaffer	Stoppages of pay $.67 admonished	1 Mar 44	Lt.Col J.A. MacDonald	
Dundurn Sask	2 April 1944	Tpr	nil	A.W.L. from 0600 hrs 3/Apr/44 to 0210 hrs. 23/Apr/44. Total absence 19 days,20 hrs,10 mins. A A Sec 15 (1)	Sgt Doritty D.A. and Documentary	28 days det.	24/Apr/44	Lt.Col C.F. Smith	For.20 days pay 149 (1)(a) FR&I
Windsor N.S.	31 May 44			A.W.L. from 0630 hrs 31/5/44 until 1155 hrs 27/6/44 Total absence 28 days 5 hrs 25 mins.	Documentary	28 days det.	17/7/44	Col. A.J. Brooks	

CERTIFIED TRUE COPY OF ORIGINAL DOCUMENT

Maj. Reg Adj.

Officer having custody of original regimental documents 5 CITR 10 Feb 45

I, No . A. 118257, Private Joseph Jacob RUSZCZAK, No 5 Canadian Infantry Training Regiment, acknowledge that I have this day at ~~1110~~ hours been served with the following documents free of charge; (a) Copy of Summary of Evidence, and (b) Copy of Charge Sheet both in connection with my forthcoming trial by Field-General Court Martial.

In the Field,
12 Feb. 45

J J Ruszczak Pte.

I, No. A. 118257, Private Joseph Jacob RUSZCZAK, No 5 Candaian Infantry Training Regiment, acknowledge that I have been informed that the convening officer may appoint or apply for the services of an officer holding legal qualifications to act as prosecutor at my trial by Field-General Court Martial and I have been advised of my rights to retain counsel . I do not intend to retain the services of counsel but desire to have a Defending Officer assigned to represent me at my said trial. I desire the services of Capt. F. C. Peters, 5CITR if he is available for this purpose. I waive the 7 days notice mentioned in Rule of Procedure 89 (B).

In the Field,
12 Feb. 45

J J Ruszczak Pte

I, No. A. 118257, Private Joseph Jacob RUSZCZAK, No 5 Canadian Infantry Training Regiment, acknowledge that on the 9th day of February 1945 , I elected to be tried by Field-General Court Martial and that on 10th day of February , 1945 , I was given an opportunity of reconsidering my decision to be so tried. I do not wish to change my decision.

In the Field
12 Feb. 45

J J Ruszczak Pte

LIST OF WITNESSES

Capt. Hamish William McIntosh, RCAMC, Att'd 5 CITR
Capt. Maurice William Chepesiuk, RCAMC, Att't 5 CITR
No B. 64403 Pte. Leslie MacDonald Swanston, 5 CITR.

STATE OF TRAINING OF ACCUSED

No. A. 118257, Pte. Joseph Jacob RUSZCZAK, No 5 CITR requires 6 weeks infantry training.

MEDICAL CATEGORY OF ACCUSED

No. A. 118257, Ptd. Joseph Jacob RUSZCZAK, No 5 CITR is

24, 111111. Pulhems.

SE - 77

Rev. Ruszczak, S.J.

Missing

5T-138

Pte. Ruthven, G.

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt Col W A Lucas Comd 2 CDN GEN TPT CAN Dated 19 SEP 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or conformed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit
D 72236	PTE	GEORGE	RUTHVEN	47 CDN ARMY TPT COY RCASC

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 25th SEP 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn b. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5 ~~President to accused: Do you object to~~ as interpreter ? Ans ~~The Interpreter is sworn (1). Do you object to~~ as shorthand writer ? Ans ~~The shorthand writer is sworn (1).~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO SIR (2).

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	A F TURNOCK	45 CDN ARMY TPT COY
Member	CAPTAIN	G S WRIGHT	69 CDN GEN TPT COY
Member	LIEUT	T J HARTIGAN	66 CDN GEN TPT COY
Judge-Advocate	CAPTAIN	J K KIDD	HQ A TPS AREA
Prosecutor	LIEUT	G E SCOTT	47 CDN ARMY TPT COY
Defending Offr	CAPTAIN	F E MURPHY	47 CDN ARMY TPT COY

Questions by President: Is the Prosecutor a lawyer ? Ans NO SIR Is the Defending Offr a lawyer ? Ans NO SIR

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Qs p 3.)

A8. The accused D 72236 PTE RUTHVEN G before arraignment make(s) (no) objection(s) to the (~~special plea~~) (~~pleas~~) (1).

(1. If a special plea is made for separate trial on one or more charges (RP 62(2), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RuP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~not~~) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part 1 of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B + E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.). *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see AP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO SIR (5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ... charge(s). Part I of the Schedule is amended accordingly.~~

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. ~~As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.~~(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded ~~GUILTY~~ are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. ~~The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using~~ Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. ~~President to accused : Do you wish to apply for an adjournment on the ground that any of the rules~~ relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)

NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 80(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans .....

Do you intend to call witnesses on your behalf ?

Ans .....

Are they witnesses as to character only ? Ans .....

(1. *RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF AF5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1; 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 42, *117*(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(*B*) (*d*), *RP* 45, *120*(*A*). 2. *AA* 54(*B*), *RP* 45, *117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. ~~The accused having been found Guilty on one or more of the charges, the proceedings are concluded~~ by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans NO

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(*l*) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex Y and Ex Z respectively.(3)

(1. *MFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans BY MY DEFENDING OFFICER (2)

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(*B*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP* 7(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas AO* 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*B*), 68(*l*), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D 72236 PTE RUTHVEN G. 47 CDN ARMY TPT COY RCASC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 40	GUILTY	GUILTY	
2nd " A 40	GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 6 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on ~~(date)~~ ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of NIL days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: TO UNDERGO DETENTION FOR A PERIOD OF SIXTY (60) DAYS AND TO BE PUT UNDER STOPPAGE OF PAY UNTIL HE HAS MADE GOOD THE SUM OF ($15-14-6) IN RESPECT OF DAMAGES TO C.M.V. CL 4277840

(Sgd) J K Kidd Capt 25 SEP 45 (Sgd) A Hullock President (RP 45, 50 7 Majs)
Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

Date 28 Sep 45. (Sgd) G. A. Lomer Lt Col
Commanding H.Q. Cand. Sc. Con. Gen. Lt. Col. RCASC.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D.72236 Pte G.Ruthven	1 Oct 45	W B Bailie Major

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

MEDICAL CERTIFICATE (A. R. 615-360)

I certify that I have this morning examined No. D 72236

Pfc RUTHVEN G. of 47 Coast Artillery T/O Co RCAAF, in my opinion,

he is fit to undergo trial by Court-Martial

Station Fuld

Date 25 Sept 45

J. H. Morton Capt
Medical Officer

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 1-4-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-72236	Pte		George	RUTHVEN,	47 Cdn Army Tpt Coy RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above is the accused, being subject to military law, has (~~xxxx~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 19 Sep 45 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable that delay the trial be referred to a superior authority xx~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint: (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	A.F. Tulloch	45 Cdn Army Tpt Coy

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by CC 69 Cdn Gen Tpt Coy	
Lieut	To be detailed by CC 66 Cdn Gen Tpt Coy	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	J.K. Kidd	HQ A Tps Area

On Active Service in the Fd

in Holland (Country.)

(Signed personally. RP 105 fn 2) Lt-Col (Rank.) C.F.ASC

Dat 19 Sep 45

Commanding HQ Comd 2 Cdn Gen Tpt Coln

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

C H A R G E S H E E T

The Accused, D.Jacob, Pte, Ruthven, G., 47 Cdn Army Tpt Coy, RCASC, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
A. A. Sec 40

WHEN ON ACTIVE SERVICE

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field on 30 Jul 45, on or about 2000 hrs, improperly and without authority used Cdn Mil Veh GL.4277840 for his own private purposes, resulting in damage to the said vehicle in the amount of Fifteen Pounds, fourteen Shillings (£15-14-0).

SECOND CHARGE
A. A. Sec 40

WHEN ON ACTIVE SERVICE

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, 30 Jul 45, on or about 2330 hrs, did drive Cdn Mil Veh GL.4277840 in a negligent manner, thereby becoming involved in an accident

In the Field
3 Sep 45

(D. F. Delaney) Major,
Officer Commanding,
47 Cdn Army Tpt Coy RCASC

To be tried by Field General Court Martial.

In the Field
19 Sep 45

(W.A. Lucas) Lt-Col
C.RASC
Hq Comd 2 Cdn Gen Tpt Colm

Plea of Mitigation in the case of

D 72236 Pte Ruthven G.

Sir, Pte Ruthven has pleaded guilty to the two charges for which he is appearing before this Court, namely, using a Mil veh. for his own private purposes and secondly, negligently becoming involved in an accident. However, I feel that one particular fact affecting the circumstances of the case, should be brought to the Courts attention. That fact is simply this, that Ruthven took the veh in question in company with an NCO. The NCO being L/Cpl Dominic R. I wish to point out, Sir, that by his presence in the vehicle when Ruthven drove away from the veh lines, L/Cpl Dominic encouged Ruthven in this act. I trust you will give this fact full consideration when arriving at your decision with regard to the sentence.

With respect to Pte Luthvens character as a soldier and as a man, I feel I am quite qualified to speak, as I was his Pl offr for approx 2 years. As can be seen from Luthvens AF 1316 he has not been in trouble for over 2½ years. During all that time Luthven has been employed as a driver and has been a very good driver. He has carried out all tasks, no matter how arduous or his manner, in a cheerful and capable manner. In connection with this, I might mention that on one occasion when Luthven was driving a 10 ton veh on an ammo detail, a V1 bomb landed less than 10 yards from his vehicle, blasting it off the road. Luthven was seriously injured and had a considerable hospitalization.

I would like you, Sir, to take into full account Luthvens excellent record as a soldier. I know him very well and I can assure you that I have no hesitation in commending Luthvens character and conduct.

J Murphy Capt

Exhibit "A"

Summary of Evidence

in the case of

D77736 Pte Ruttan G, 4 ~~7~~ Can army ~~Tpt Coy~~ R.C.A.S.C. a soldier of the Canadian army, on active service, charged with:

First charge
A.A. Sec 40 conduct to the Prejudice of good order and military Discipline

Second charge
A.A. Sec 40 neglect to the Prejudice of Good Order and military Discipline

~~(Third charge conduct to the Prejudice of Good Order and A.A. Sec 40 military Discipline)~~ Withdrawn

By direction of the Commanding Officer, evidence is taken on oath.

First Witness 3297684 Cpl. Levitt E. of U.S. military Police, Sutherland Holland having been duly sworn, states:

"On 31 July 45 at 0105 hrs with Cpl. Vinson, I was called to the scene of a vehicle accident near Susteren. On arriving there, I found that a Canadian ~~Mack~~ truck had overturned and a soldier had been killed while two other soldiers were lying on the ground seriously injured.

On questioning women, who were standing around I learned that at least three women had been riding on the truck. I questioned these three women briefly and they gave their names as; Elizabeth van de Winkel, Catherine Hagen, and Christine Smeets, all of Susteren.

"I was not directly involved with the
guard men, myself, but I watched the methods
and there was no sign of liquor on any of the soldiers
on the vehicle at that time. I do know cars by
them being placed in the ambulance."

The accused declines to cross examine the
witness.

Cpl. Edward Lloyd

Second witness Mrs Slanger, of Vincentnesplein, Austerweg
having been duly sworn, states:
"On Monday 20 Jul last we went to a party at
Rooftem. At 11 o'clock we went towards Uden
we ran outside there was a trailer in front of the
place and the soldiers told us they would
take us home, so we went with them. If they
were completely drunk, I cannot say, but they
carried a bottle with them. Five of us were
sitting in front of the car, two soldiers and
three women. One soldier was sitting with
a woman on top of the car. When we were at the
bridge I saw at once that the car was
moving to the edge of the road, and then
everything happened very quickly before I really
knew what was going on. I was thrown out of
the vehicle and then I was standing on my
legs again I saw the soldiers were lying next
to me. One soldier was killed immediately
and the other was talking to Mrs. v. d. Winkel

... the lane going under the car. The girl from Rooiterm was not to be found.

Further by Mr. Lewis (King's Counsel)

Q. Do you recognise anyone in this room as the driver of the vehicle on the night of the accident?

A. Yes I recognise him (The witness points to Mr Hutchinson)

Cross-examined by the accused

Q. Did you actually see me drinking cognac on the night of the accident?

A. No.

C. Slanger Nieuwoudt.

Third Witness Mrs. Smeets, 24 Vincent Kusplein, Sunterm.

having been duly sworn states:

"On Monday 30 Jul we went to the fair in Rooiterm at Klunkens (dance) Hall. When the dance was finished we left the Hall for home, and as we came outside we saw a truck with three soldiers. One girl was from Rooiterm got into the truck next to the driver. She said she was riding to Sunterm and the driver told us we could go too, so we went.

We sat in the cab with 2 soldiers and 3 women. One soldier and one woman sat on top. There were 3 women from Sunterm and one from Rooiterm. When we came to the bridge the truck went off the road and into the side causing the truck to turn over into the river. We only just noticed what happened when we came out. One soldier was

[illegible] of [illegible] lay seriously and the two others lay unconscious on the ground. Mrs. Van de Wiele lay under the truck and the [illegible] holding [illegible] the rabbit. Mrs. Flanzer and I were just to see each other. We saw no one of the girls from Rowton. I went to the house to clean my wounds and then went back to the meadow to look at Mrs Van de Wiele who lay unconscious. I left to go to the priest at Sacht Cons. On return [illegible] Mrs Van de Wiele was on cart and cart in front of [illegible] Star.

I cannot say if the soldiers were drunk but they had a bottle of cognac with them.

Cross examined by the Accused

Q1. Do you remember the time of the rabbit was on the right of the accused

A1. No it was too dark.

Q2 Did you see Mr ~~Fulton~~ drinking any intoxicating liquor in the right of the accused

A2 NO.

A. L. Smith Ohlenforst.

Further Written Instructions, 1st Pos. Northern Army

[illegible] Sept 1st

To Headquarters 1st Division on Monday at precisely past 2 o'clock and take up the position assigned to your command. Sept eleven and be ready to [illegible] Sept 2nd [illegible] accordingly

out of the car. ~~They [illegible]~~ They had a bottle of

"cognac with them."

Cross-examined by the accused.

Q. Did you see the Scottsmen drinking any alcoholic liquor on the night of the accident?

A. Yes.

B. Prudhomme

Pte Wilson No 3918 (Private) 4 Coy army Pte Coy R.C.A.S.C. being duly sworn, states:

On June 1943 I was Pte Private 4 Coy Coy army Pte Coy R.C.A.S.C. after we finished loading and at Avellon we returned to Sittard about 1830 hrs. 30 July. After I got all cleaned up I started down the road about 1930 hrs. I saw one of our vehicles pulling out the gate as I jumped on the running board. Pte Dominic and Pte Scottsmen were in the cab of the lorry. I asked them where they were going. They said to a dance we went along with them. We went to a place called Rooster. After the dance was finished about 2315 hrs. Pte Dominic, Pte Scottsmen and myself were coming out the door and met some girls coming out. They asked for a ride to their home. We told them we were going back to Sittard. As it was in the same direction as they were going, we said it was alright for them to come along. We started off down the road. The next thing I knew the truck was rolling over. After I awaked

[illegible] if he had I beg that for about one hour [illegible]
[illegible] who happened to be [illegible]
stopped and looked [illegible] to the English.
It was about another hour before the ambulance
arrived and took me to [illegible]
Hospital, Lugi.

Cross by Officer taking the Summary.

Q1. [illegible]

Q2. [illegible]

A2. I [illegible]

The accused declines to [illegible] examine the witness.

J. Seamen

Joseph Withers F66666 Pte Connell R. M., 47 Can Army
Tpt Coy R.C.A.S.C. having been duly sworn
states:-

"I am F66666 Pte. Connell R. M., 47 Can Army
Tpt. Coy. R.C.A.S.C. We returned from
Verdun approximately 1930 hrs. and parked at
the railway station at Stard. When we were
getting showed up, I heard an engine going.
I went to see who had this engine running.
I saw the tail end of a truck going out
through the gate. I thought it possibly
one of the drivers of which mechanics
are testing the vehicle as I checked to

... not with me now. I found that it was
Pte. Pattenden's lorry. Approximately 2 days
passed by and I still have the vehicle
still in my unit. At approximately 0900
hrs. 31 July, the American military Police
unit was up and told me about the
accident. I went to the scene of the accident
and checked the vehicle for personal kit.
There was nothing else I could do, so I went
back to Bottrop. I typed up the
report of the accident and to 47 Coy and reported it to 47 Coy.

Question by Officer Taking the Summary
Q 1. Did you give anyone authority to take this
vehicle out.

A 1. No sir

Q 2 what is the policy in your platoon
re ordering taking vehicles out of the lying-up
area at night.

A 2. If we are moving it on a route we have
been told that it is unsafe for civilians to
be on the detail to such a stage to
charge for a vehicle pending on R.C.D. is
a matter for the charge for it.

R. M. Connell.

Fourth Witness Capt. J. R. D. Anderson, 47 Coy Army Tpt
Coy R.C.A.S.C., having been duly sworn, states:-
"I am workshops officer in 47 Army Tpt Coy.
On 15 Aug 45, I examined the Ford Truck,
W.D. number CL427778 80 which was

Brought into our workshop from Bree, Belgium by one of our Canadian lorries (what) bought it from Bree, Belgium.
I assess the damages at fifteen Pounds, fourteen Shillings. (£15-14-0)

The accused declined to cross examine the witness.

Robert Jan Godding, interpreter for U.S. Military Police at Sittard Rest Centre, Holland - did the interpreting for Mrs. Hangen, Mrs. Smeets and Bertha Ruetjens, the second, third and fourth witnesses.

Question to the Accused
Do you wish to make a statement or give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer by the Accused
I have nothing to say.

I certify that the Rules of Procedure 4 (a) (b) (c) (d) and (f) have been complied with.

Taken down by me in the presence of the accused in the Field, this thirty first day of August 1945

G Abbott Lt
47 Corps Army Tpt Coy RCASC.

CERTIFIED True and Correct copies of the Original Summary.

(G. O. Scott) Lieut.
Officer Taking Summary,
47 Cdn Army Tpt Coy RCASC.

SUMMARY OF EVIDENCE

D.72230, Pte. Ruthven, G., 47 Cdn Army Tpt Coy, RCASC, a soldier of the Canadian Army, on Active Service, charged with:

FIRST CHARGE — CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE
A. A. Sec 40

SECOND CHARGE — NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE
A. A. Sec 40

By direction of the Commanding Officer, evidence is taken on oath.

FIRST WITNESS 3297084l, Cpl. Levitt, E., of U. S. Military Police, Sittard, Holland, having been duly sworn, states:

On 31 July 45 at 0105 hrs with Cpl. Vineen, I was called to the scene of a vehicle accident near Susteren. On arriving there, I found that a Canadian Mack truck had overturned and a soldier had been killed, while two other soldiers were lying on the ground, seriously injured.

On questioning women, who were standing around, I learned that at least three women had been riding on the truck. I questioned these three women briefly and they gave their names as; Elizabeth van de Winkel, Catherine Slegen and Christine Smeets, all of Susteren.

I was not directly in contact with the injured men, myself, but I searched the vehicle and there was no sign of liquer or of a bottle in the vehicle at that time. The men were by then being placed in the ambulance.

The Accused declines to cross-examine the Witness.

(Signed) "Edward Levitt" Cpl.

SECOND WITNESS Mrs. Slangen, 4 Vincentiusplein, Susteren, having been duly sworn, states:

On Monday 30 Jul last, we went to a party

at Reesteren. At 11 o'clock we went home. When we came outside there was a trailer in front of the place and the soldiers told us they would take us home, so we went with them. If they were completely drunk, I cannot say, but they carried a bottle with them. Five of us were sitting in front of the car, two soldiers and three women. One soldier was sitting with a women on top of the car.

When we were on the brigge I saw at once that the car was moving to the edge of the road, and then everything happened very quickly before I really knew what was going on.

I was thrown out of the vehicle and when I was standing on my legs again I saw that soldiers were lying next to me. One soldier was killed immediately and the other was talking to Mrs. v.d. Winkel, who was lying under the car. The girl from Reestern was not to be found.

QUESTIONS BY OFFICER TAKING SUMMARY:

Q.1 Do you recognize anyone in this room as the driver of the vehicle on the night of the accident?
A.1 Yes. I recognize him. (The Witness points to Pte. Ruthven).

CROSS-EXAMINED BY THE ACCUSED:

Q.1 Did you actually see me drinking cognac on the night of the accident?
A.1 No.

(Signed) "O. Slangen Niessen"

THIRD WITNESS Mrs. Smeets, 24 Vincentiusplein, Sustern, having been duly sworn, states:

On Monday 30 Jul we went to the fair in Reestern at Klinkens (dance) Hall. When the dance was finished we left the Hall for home, and as we came outside we saw a truck with three soldiers. One girl from Reestern got into the truck next to the driver. She said she was riding to Sustern and the driver told us we could go too, so we went.

We sat in the cab with two soldiers and three women. One soldier and one women sat on top. There were three women from Sustern and one from Reestern. When we came to the bridge the truck went off the road and into the side causing the truck to turn over into the verge. We only just noticed what

happened when we came out. One soldier was killed instantaneously and the two others lay unconscious on the ground. Mrs. Van de Winkel lay under the truck and the soldiers lay beside the vehicle.

Mrs. Slangen and I were first to see each other. We saw no more of the girl from Reestern. I went to the house to clean my wounds and then went back to the meadow to look at Mrs. van de Winkel who lay unconscious.

Afterwards, the priest and doctor came. An hour afterwards the Red Cross ambulance came and took her to Sittard.

I cannot say if the soldiers were drunk but they had a bottle of cognac with them.

CROSS-EXAMINED BY THE ACCUSED:

Q.1 Do you remember who the driver of the vehicle was on the night of the accident?
A.1 No. It was too dark.

Q.2 Did you see me drinking any intoxicating liquer on the night of the accident?
A.2 No.

(Signed) "A. C. Smeets Chlenferst"

FOURTH WITNESS Bertha Rustjens, 131 Pas, Reestern, having been duly sworn, states:

I danced with Pte. Ruthven on Monday at Reestern. At a quarter to eleven I also spoke to him. We went away at ten minutes past eleven and he gave me a lift part way and before the accident I jumped out of the car. They had a bottle of cognac with them.

CROSS-EXAMINED BY THE ACCUSED:

Q. Did you see me drinking any intoxicating liquer on the night of the accident?
A. No.

(Signed) "B. Rustjens"

FIFTH WITNESS M.53918, Pte. Seamen, J., 47 Cdn Army Tpt Coy, RCASC, having been duly sworn, states:

I am M.53918, Pte. Seamen, J., 47 Cdn Army Tpt Coy, RCASC.

After we finished loading coal at Heerlen we returned to Sittard about 1830 hrs, 30 July. After I got all cleaned up I started down the road about 1930 hrs. I saw one of our vehicles pulling out of the gate so I jumped on the running-board.

L/Cpl. Dominic and Pte. Ruthven were in the cab of the lorry. I asked them where they were going. They said, "To a dance." So I went along with them. We went to a place called Roostern.

After the dance was finished about 2315 hrs, L/Cpl. Dominic, Pte. Ruthven and myself were coming out the door and met some girls. They asked for a ride to their home. We told them we were going back to Sittard. As it was in the same direction as they were going, we said it was alright for them to come along.

We started off down the road. The next thing I knew the truck was rolling over. After I crawled out of the truck, I lay there for about an hour. Some Americans, who happened to be going by, stopped and I asked them to get us to the hospital. It was about another hour before the ambulance arrived and took us to 298 U. S. General Hospital, Liege.

QUESTIONS BY OFFICER TAKING THE SUMMARY:

Q.1 Was Pte. Ruthven under the influence of an intoxicating drink at the time of the accident?
A.1 Not that I know of, sir.

Q.2 Who said it was alright for the civilians to ride in the vehicle?
A.2 L/Cpl. Dominic, sir.

THE ACCUSED DECLINES TO CROSS-EXAMINE THE WITNESS.

(Signed) "J. Seamen"

SIXTH WITNESS F.Sobb, Cpl. Connell, R. M., 47 Cdn Army Tpt Coy, RCASC, having been duly sworn, states:

I am F.Sobb, Cpl. Connell, R. M., 47 Cdn Army Tpt Coy, RCASC.

We returned from Heerlen approximately 1930 hrs and parked at the railway station at Sittard. When we were getting cleaned up, I heard an engine going. I went to see who had their engine running. I saw the tail-end of a truck going out through the gate. I thought possibly one of the drivers or vehicle mechanics was testing the vehicle so I checked to see which one was gone. I found that it was Pte. Ruthven's lorry.

pproximately 2300 hrs I went to bed. At that time the vehicle still wasn't in. At approximately 0300 hrs, 31 Jul, the American Military Police woke me up and told me about the accident.

I went to the scene of the accident and checked the vehicle for personal kit. There was nothing else I could so, so I went back to Sittard. I stayed up till breakfast. After breakfast, I went back to 47 Coy and reported it to Coy HQ there.

QUESTIONS BY OFFICER TAKING THE SUMMARY:

Q.1 What is the policy in your platoon regarding taking vehicles out of the lying-up area at night?

A.1 If we are not right in a town we have been told that it is alright for whoever is in charge of a detail to send a lorry to a nearby town providing an NCO is in charge of it.

Q.2 Did you give anyone authority to take this vehicle out?

A.2 No, sir.

(Signed) "R. M. Connell"

SEVENTH WITNESS Capt. J. R. Danaher, 47 Cdn Army Tpt Coy, RCASC, having been duly sworn, states:

I am Workshop Officer in 47 Cdn Army Tpt Coy, RCASC. On 15 Aug 45, I examined ten-ton Mack, A. D. Number CL.427840, which was brought into our workshop from Bree, Belgium, by one of our breakdown lorries.

I assess the damages at Fifteen Pounds, Fourteen Shillings (£15-14-0).

The Accused declined to cross-examine the Witness.

(Signed) "J. R. Danaher" Capt.

Robert Jan Gedding, Interpreter for U. S. Military Police at Sittard Rest Centre, Holland, did the interpreting for Mrs. Slangen, Mrs. Smeets and Bertha Rustjens, the second, third and fourth Witnesses.

QUESTION TO THE ACCUSED:

Do you wish to make a statement or give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

ANSWER BY THE ACCUSED:

I have nothing to say.

I certify that the Rules of Procedure 4 (c), (d), (e) and (f) have been complied with.
Taken down by me in the presence of the Accused at the Field, this thirty-first day of August, 1945.

(Signed) (G. C. Scott) Lieut.
47 Cdn Army Tpt Coy, R.C.A.S.C.

ARMY FORM B.199 (WAR)

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank.	Name.	Regiment (or as the case may be).
D.72236	Private	GEORGE RUTHVEN	47 Cdn Army Tpt Coy, RCASC.

NOTICE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be attached to the proceedings. The numbers hereinafter stated should correspond with the number of Entries in the Field Conduct Sheet, precautions being taken to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized Special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A. W. O. L. 4 times.

For Neglect to the Prejudice 3 times.

For ____ ____ times.

For ____ ____ times.

Date of first entry in Field Conduct Sheet 2 Jul 42

Date of last entry in Field Conduct Sheet 17 Feb 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

3. The number of the present term of imprisonment to be undergone by the accused, beginning on the ____ day of ____ 19__, is ____ days.

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for nil days in military custody, i.e., 25 days in open arrest, nil days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 22 years, 6 months.

6. The date of his attestation is 14 Jul 41.

7. The service which the accused is allowed to reckon is ____

8. The accused is in possession of 1939-45 Star, Atlantic Star, War Medal, 1939-45, Canadian Volunteer Service Medal and Clasp.

[State the military decoration (if any) held by accused.

9. The accused has served ____ years ____ months ____ days with the colours, and ____ years ____ months ____ days in the ____ rank of ____

10. The accused has served ____ years ____ months ____ days with the ____ regiment, and ____ years ____ months ____ days in the ____ rank of ____

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27880) W1-24930-3404 24,000 7/44 A.& E.W.Ltd. Gp.698 Forms/B.199/Wart(s)

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		N/A		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 25th day of Sep 45

J Murphy Capt

MFM 6
(AFB 122)
40/PAS/130 (343B)

No. D.72236 Name RUBIVEN G. D. Sqn. Battery or Company Corps R.C.A.S.C. Date of enlistment 13-6-41 QC Badges Service or Proficiency Pay Character Very good

Company Conduct Sheet Date of last entry in N/A No and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No 1 Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Original sheet destroyed on completion of six months service in accordance with C.A.O.R.O. Big Date of last entry 30-3-41									
Field	30-8-42	Cpl	Nil	AWL (18 hrs, 30 min.)	Documentary	1 days pay	2 Jul.42	O.C.	
Field	7-7-42	Pte	Nil	A.A. Sec 40	QSM Birch Cpl. Dion	3 extra Guard duties	6-7-42	O.C.	
Field	14-3-42	Pte	Nil	AWL (1 hr. 35 min.)	Sgt. Terry Sgt. Starkey	3 days pay	15-3-42	O.C.	
Field	6-10-42	Pte.	Nil	Neglect to the prej. &c. Did not report at appointed place when ordered to do so.	Cpl. Knott	7 days pay	7-10-42	Major Gagnon	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	16/10/42	Pte		A.W.L. 15 hrs 30 mins AA Sec 15(1)	Cpl.Knott L/Cpl.Ipperciel	10 days pay FR&I 149(c)	20/10/42	Major A. Gagnon	
Field	11-11-42	Pte		Charged under Sec 40 AA Neglect to the prej &c .. causing damage to WD veh CC.1639858	Documentary. Steps.	1 d.p. FR&I 149(1) (a) pay £6-11-3	5 Feb 43	"F. M. Jefferson" Capt	
Field	16 Feb 43	Pte		Sec. 15(1) A.A. AWL from 2359 hrs, 15 Feb 43 to 0755 hrs, 17 Feb 43. Time absent - 7 hrs, 56 mins.	Cpl. Atkinson	14 days C.B, 8 days pay FR&I 149(c)	17 Feb 43	Major G. Gibb	1 d.p. FR&I 149 (1) (a)
Granted 9 days P.L. to U.K. with money all'ce. in lieu of rations and under FR&I 789 (3) (4) c 15 Apr 43 ...									

Certified True Copy of Original

H. Scott Major
Officer in Custody of record

2396. Pte. Rutledge C.S.
148th Highlanders.

10/R/332/

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 24th day of March, 1941.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[XXXX

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B-73936 PTE. RUTLEDGE, C.G. (48th H of C Fd Unit) No.1 Cdn Inf Hldg Unit.	First Charge A.A. Sec 9 (1) as per charge sheet	Not Guilty	Not Guilty	
	Second Charge A.A. Sec 15 (1) as per charge sheet	Not Guilty	Not Guilty	Confirmed L.
	Third Charge A.A. Sec 15 (1) as per charge sheet	Guilty	To undergo Fourteen days detention ~~to be kept under close arrest~~ Guilty 15th	
	Alternative to First Charge A.A. Sec 9 (2) as per charge sheet	Not Guilty	Not Guilty	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" No.
Answer (*to be recorded on separate sheet if necessary*):

(Signed) L. F. Page. Brigadier (Signed) A.S. Dingle Major

Commanding Canadian Base Units, Cdn Army. *Convening Officer* (*e*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 25th day of March 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(~~The officers under instruction~~)

* Omit if not applicable.

were duly sworn.

Signed this 25th day of March 1941.

A.S. Dingle Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1940.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

Signed this day of 19

N/A
President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(~~I direct that the soldier named in the margin be not committed to prison until further orders.~~) L

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 31st day of March 1941

L. F. Page. Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of B-73936 Pte. Rutledge, C.G. (48th)

(*a*) (Dated) 3rd April 1941 (Signed) L.W.W. Black
L. W. W. BLACK, OFFICER COMMANDING
No. 1 CDN. INFANTRY HOLDING UNIT.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(44759) W. 40112—80 200 m. 1/40 T. S. G. 800

CHARGE-SHEET

The accused, No. B-73936 Pte. RUTLEDGE, C.G., (48th Highlanders of Canada), on the strength of No. 1 Canadian Infantry Holding Unit as a reinforcement, a soldier of the Canadian Army (Overseas), is charged with:-

First charge Sec 9 (1) Army Act — While on active service, disobeying in such a manner as to show a wilful defiance of authority a lawful command given personally by his superior officer in the execution of his office--

in that he

at Kingswood, Surrey, on the 4th December, 1940, did throw down his shovel and leave his work whilst on fatigue duty, after being personally ordered by Sgt. Stoutley, who was in charge of the fatigue, to shovel a pile of cinders.

(or in the alternative)

First charge Sec 9 (2) Army Act — When on active service, disobeying a lawful command given by his superior officer--

in that he

while on fatigue duty, when ordered by his superior officer to shovel a pile of cinders disobeyed the command, throwing down his shovel and leaving his work.

Second charge Sec 15 (1) Army Act — When on active service, absenting himself without leave--

in that he

at Kingswood, Surrey, did absent himself without leave from 1730 hours on the 4th December 1940 until 2230 hours on the 4th December 1940.

Third charge Sec 15 (1) Army Act — When on active service, absenting himself without leave--

in that he

when in confinement, at Roedean College, Brighton, did absent himself without leave from about 0545 hours, 24th December 1940, until about 1900 hours, 14th January 1941.

To be tried by Field General Court-Martial.

...Brigadier

Witley, Surrey,
20th March, 1941.

L.W.W. Slack
..... Lt-Colonel
(L.W.W. Slack) Commanding Officer
No. 1 Cdn. Infantry Holding Unit

Borden Mantle.
This 24th day of March, 1941

24th Mar 41

A.T. Dixon Major President F.G.C.M.

Mar 25/41.

MEDICAL OFFICER'S CERTIFICATE

I certify that this day I have examined No. B73936

Pte Rutledge C. G , and find him fit to stand trial by

Court-Martial.

25th March 1941

Witley, Surrey,

Capt. R.C.A.M.C.

Medical Officer,
No. 1 Cdn. Inf. Holding Unit

B-73936, Pte. Rutledge, C.G., (48th H of C Fd. Unit) No. 1 Cdn. Inf. Holding Unit, tried by Field General Court-Martial at Witley, Surrey, on the 25th day of March, 1941.

The order convening the Court, the charge-sheet and the summary of evidence are laid before the Court.

Prosecutor - Lieut. H.M. Howell
Defending Officer - Capt. A.A. Kennedy

At 1000 hours the Trial commences.

The names of the President and members of the Court are read over in the hearing of the accused and they severally answer to their names.

Q1 - Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A1 - No, sir.

The President and members are duly sworn.

Q2 - Do you object to M-15577 Sgt. Stanley Fidler, The Edmonton Regiment, C.M.H.Q., acting as Court Stenographer?
A2 - No, sir.

The Court Stenographer is duly sworn.

The charge-sheet is signed by the President and annexed to the proceedings.

The accused is arraigned upon each charge in the above mentioned charge-sheet.

Q3 - Are you guilty or not guilty of the first charge against you, which you have heard read?
A3 - Not guilty, sir.
Q4 - Are you guilty or not guilty of the alternative to the first charge against you, which you have heard read?
A4 - Not guilty, sir.
Q5 - Are you guilty or not guilty of the second charge against you, which you have heard read?
A5 - Not guilty, sir.
Q6 - Are you guilty or not guilty of the third charge against you, which you have heard read?
A6 - Guilty, sir.

R.P. 35(B) is complied with by the Court in connection with the third charge.

Prosecutor - This offence is under Section 9(1) of the Army Act and in view of the fact that the accused has pleaded not guilty to the first and second alternatives it will be necessary to try him on the two alternatives and for the Court to decide. On the first alternative it is incumbent upon the prosecution to prove six separate elements; firstly, that it was a lawful command; secondly, that it was given by the accused's superior officer; thirdly, that it was in the execution of his office; fourthly, that it was disobeyed; fifthly, that it was disobeyed in such a way as to show wilful defiance of authority, and; sixth, that the command itself was a lawful one and could be carried out by the accused.

The Prosecutor proceeds to call witnesses.

First witness for the prosecution, B-73262, Sgt. Stoutley, E.E., 48th Highlanders of Canada, being duly sworn, is examined by the prosecutor.

Q7 - Sgt. Stoutley, the accused, Pte. Rutledge, is charged under Section 9(1) of the Army Act (reads charge). That is the charge against the accused. Will you tell the Court what you know, if anything, about events that took place on December 4th?
A7 - I was in charge of a fatigue party of fifty men and one N.C.O. There were several jobs around camp and as soon as any member finished a job we put him on another job.

Q8 - What kind of a job was it?
A8 - Building a detention camp.
Q9 - Was it a platoon fatigue or a company fatigue?
A9 - A company fatigue.
Q10 - What company?
A10 - "C" Company, 48th Highlanders of Canada.
Q11 - Where was this work being done?
A11 - At Cormongers.
Q12 - How did you happen to be over there?
A12 - Twenty-five men from my company were ordered to go on Brigade fatigue and I got over there and found twenty-five men and an N.C.O. from "B" Company so I took command of the fatigue party of fifty men.
Q13 - How did "C" Company happen to be on?
A13 - We were duty company and any brigade duties we did, sir.
Q14 - Tell the Court what happened on this fatigue as far as it concerns the accused.
A14 - When we found out that men weren't working we put them on another job. The accused and another man were not working at the time and I ordered them to go over to a pile of cinders to fill wheelbarrows.
Q15 - You ordered them to shovel cinders. How did you give this order?
A15 - "You two go over there and shovel cinders into the wheelbarrows." They went over and stayed a few moments.
Q16 - How long?
A16 - Three or four minutes, then Rutledge threw down his shovel and came past where I was standing.
Q17 - How far were you from the pile of cinders?
A17 - Fifteen yards.
Q18 - Was anybody with you?
A18 - Corporal Newton. I asked where he was going and he said he was going to eat. We had equipment and sandwiches down over the hill about 500 yards from where the actual fatigue was.
Q19 - About what time was this?
A19 - 1430 hours. I told him dinner was between 1150 and one o'clock and to go back to work. He went back and stayed a few moments and then left again and I asked him where he was going and he said "If we fucking well don't eat, we fucking well don't work." I placed him on a charge and he went on down to where the sandwiches were.
Q20 - You say he left his work?
A20 - Yes, sir.
Q21 - Were you watching the pile of cinders?
A21 - Yes, sir.
Q22 - What happened?
A22 - He laid his shovel down and he had to come past me and I told him to go back and he went back.
Q23 - How long should he have stayed there?
A23 - Until the job was finished and then he would be moved to another job. He came back and I asked where he was going and he said he was going to get something to eat and I said to get back to work, that dinner was between twelve and one, and I did ask him why he had had no dinner at noon and he said he didn't feel like it. He said "If we don't fucking well eat, we don't fucking well work" and went down to where the sandwiches were.
Q24 - What was the condition of the accused; was he alright physically?
A24 - Physically, sir.
Q25 - Was anything wrong with him?
A25 - Only that he had had a few drinks. He wasn't drunk but he had had something to drink. I was up very close and I could smell it and his eyes were bleary and I knew he had something to drink.
Q26 - In your opinion was he capable of working?
A26 - Yes, sir, he proved that by going back to the job and finishing it later on.
Q27 - What did you do about this?
A27 - I placed him under arrest there, sir.
Q28 - In open or close arrest?
A28 - Open arrest, I didn't have enough men to place him under close arrest. I had already lost a man who had been taken away under close arrest and a couple of officers from the Engineers said that a certain amount of work had to be done by a certain time.
Q29 - What time did you place him under arrest; was it the first or second time?

A29 - The second time.
Q30 - Where was he going then?
A30 - To where the sandwiches were.

Cross-examination by the defending officer.

Q31 - You say you put this man under open arrest as he went past you and he still continued down and you let him eat his sandwiches?
A31 - I knew he couldn't go very far away and I said he was on charge.
Q32 - Do you think that was a proper way?
A32 - I should have placed him under close arrest but I didn't have men to do it with. I had fifty men to look after and two officers were on my neck. I was worried about getting the job done.
Q33 - You had to put other people under arrest the same morning?
A33 - Yes, sir.
Q34 - What for?
A34 - The same thing.
Q35 - Were there other people down getting sandwiches too?
A35 - No, sir.
Q36 - How far away was the place where they were getting sandwiches?
A36 - I would say three to five hundred yards.
Q37 - Could you see the place?
A37 - No, sir, it was down below the hill.
Q38 - But you are sure nobody else was there?
A38 - I couldn't say positively. We were working in the bush and it was very hard to keep track.
Q39 - Was anybody else with the accused at the time?
A39 - Yes, sir.
Q40 - Who was that?
A40 - Scott, sir.
Q41 - The first time you saw these people you just ordered them to go up and shovel cinders?
A41 - Yes, sir.
Q42 - Did you stay around to watch them?
A42 - I was right there. I could see from where I was and there were four other men working there at the time.
Q43 - Did you go around to visit them?
A43 - I could see them.
Q44 - You didn't go near them?
A44 - Yes, sir.
Q45 - And as they walked past you stopped them?
A45 - Yes, sir.
Q46 - About this drinking; you claim you could smell his breath?
A46 - Yes, sir.
Q47 - Had he been away at noon?
A47 - I couldn't say, I didn't check. As long as the men were in the area and ready to start working I wasn't bothered about them.
Q48 - How were they dressed?
A48 - In denim dress.
Q49 - Would you think it possible to conceal drink on his person?
A49 - Yes, sir.
Q50 - You could smell this man's breath; had you had any trouble with him before?
A50 - No, sir.
Q51 - You would suggest that he started some time during the day?
A51 - I don't know, sir.
Q52 - He had been drinking at noon?
A52 - I didn't see him at noon.
Q53 - He marched there?
A53 - We went by truck, it was a long distance and we didn't get started on the job until 1030.
Q54 - Then from seven until ten-thirty you were riding in trucks?
A54 - From eight to ten-thirty.
Q55 - Then there wouldn't be much opportunity to do any drinking. Were there any pubs near this place?
A55 - I couldn't say.
Q56 - Was it near a village or out in the bush?
A56 - In the bush and there was a highway about a hundred yards from where we were and this man may have left his particular party and gone to a pub, but I couldn't say.

Q57 - There were three N.C.O's?
A57 - No, sir, myself and another N.C.O.
Q58 - But there were twenty-five men from "B" Company?
A58 - There was myself and twenty-five men from "C" Company and one N.C.O. and twenty-five men from "B" Company.
Q59 - Two of you couldn't keep track of fifty men?
A59 - Not on a job like that. The engineers supervised and the engineers told us what they wanted and we had to keep order.
Q60 - And you had to put another man under charge?
A60 - I said there was a man who had been taken away under close arrest. He had nothing to do with me at all, sir.
Q61 - What was the reason?
A61 - I don't think it has any bearing on the case. Two men came for him from the battalion.
Q62 - So that you actually lost only one man from your fatigue party?
A62 - Yes, sir.
Q63 - Why, when you found him drinking at first, why didn't you put him under arrest then. And apparently you just let him go down.
A63 - I don't think it is customary to put a man under charge every time he is found drinking.
Q64 - You say he started to disobey your order and started to disobey again and he had been drinking and then you kept on having trouble.
A64 - I placed him under open arrest and I thought that was good enough.
Q65 - It wasn't placing him under open arrest that brought him back?
A65 - No, sir.
Q66 - In the summary of evidence did you make the statement that at two o'clock Rutledge came up to you and asked if you wanted a drink and you declined?
A66 - Yes, sir.

Questions by the President

Q67 - On each of the occasions you ordered the accused to go to work, did he comply with the order?
A67 - Yes, sir, he did in a kind of slovenly manner.
Q68 - How long did he stay away from his work?
A68 - Between half an hour and an hour.
Q69 - He had time for his lunch and didn't take it then?
A69 - He said he didn't feel like it before.
Q70 - Had he complained before about not being well?
A70 - No, sir.
Q71 - Aside from that one time he did any work you asked him?
A71 - Yes, sir.
Q72 - Why do you say he did it in a slovenly manner?
A72 - He seemed to be grumbling. I couldn't make out what he was saying, but he was kind of dallying around and grumbling.
Q73 - Before you quit for the day did Rutledge carry out the duty that was given to him completely?
A73 - Yes, sir. At one time he wanted to quit and go home and the majority of the fellows thought we should only be working until four o'clock and then gone home, and I am not holding that against him.
Q74 - When he did get to work he did his work?
A74 - Yes, sir.

Questions by the Court.

Q75 - Did the accused make any remark when he was placed under open arrest?
A75 - No, sir, he just went on down.

Re-examination by the Prosecutor.

Q76 - Did the accused ever finish shovelling this pile? When he went back did he finish the job?
A76 - He went back and helped finish up the job and after shovelling the cinders went on with the wheelbarrow.
Q77 - Did he do his share of the job?
A77 - No, sir, that is why he was on charges.

Prosecutor - That is the case for the prosecution except I reserve the right to call witnesses in rebuttal to the defence evidence.

Q - There were three N.C.O's?
A - No, sir, myself and another N.C.O.
Q - But there were twenty-five men from "B" Company?
A - There was myself and twenty-five men from "C" Company and one N.C.O. and twenty-five men from "B" Company.
Q - Two of you couldn't keep track of fifty men?
A - Not on a job like that. The engineers supervised and the engineers told us what they wanted and we had to keep order.
Q - And you had to put another man under charge?
A - I said there was a man who had been taken away under close arrest. He had nothing to do with me at all, sir.
Q - What was the reason?
A - I don't think it has any bearing on the case. Two men came for him from the battalion.
Q - So that you actually lost only one man from your fatigue party?
A - Yes, sir.
Q - Why, when you found him drinking at first, why didn't you put him under arrest then. And apparently you just let him go down.
A - I don't think it is customary to put a man under charge every time he is found drinking.
Q - You say he started to disobey your order and started to disobey again and he had been drinking and then you kept on having trouble.
A - I placed him under open arrest and I thought that was good enough.
Q - It wasn't placing him under open arrest that brought him back?
A - No, sir.
Q - In the summary of evidence did you make the statement that at two o'clock Rutledge came up to you and asked if you wanted a drink and you declined?
A - Yes, sir.

Questions by the President

Q - On each of the occasions you ordered the accused to go to work, did he comply with the order?
A - Yes, sir, he did in a kind of slovenly manner.
Q - How long did he stay away from his work?
A - Between half an hour and an hour.
Q - He had time for his lunch and didn't take it then?
A - He said he didn't feel like it before.
Q - Had he complained before about not being well?
A - No, sir.
Q - Aside from that one time he did any work you asked him?
A - Yes, sir.
Q - Why do you say he did it in a slovenly manner?
A - He seemed to be grumbling. I couldn't make out what he was saying, but he was kind of dallying around and grumbling.
Q - Before you quit for the day did Rutledge carry out the duty that was given to him completely?
A - Yes, sir. At one time he wanted to quit and go home and the majority of the fellows thought we should only be working until four o'clock and then gone home, and I am not holding that against him.
Q - When he did get to work he did his work?
A - Yes, sir.

Questions by the Court.

Q - Did the accused make any remark when he was placed under open arrest?
A - No, sir, he just went on down.

Re-examination by the Prosecutor.

Q - Did the accused ever finish shovelling this pile? When he went back did he finish the job?
A - He went back and helped finish up the job and after shovelling the cinders went on with the wheelbarrow.
Q - Did he do his share of the job?
A - No, sir, that is why he was on charges.
Prosecutor - That is the case for the prosecution except I reserve the right to call witnesses in rebuttal to the defence evidence.

Q78 - Do you apply to give evidence yourself as a witness?
A78 - Yes, sir.
Q79 - Do you intend to call any other witness in your defence?
A79 - Yes, sir.
Q80 - Is he a witness as to character only?
A80 - One is a witness as to character and the other a witness as to fact.

First witness for the defence, B-76351, Pte. Scott, K., 48th Highlanders of Canada, being duly sworn, is examined by the defending officer.

Q81 - Will you tell us in your own words what happened on the 4th December when you were on a working party with Pte. Rutledge?
A81 - I was on this fatigue party at Redhill on the 4th December and in the afternoon about two-thirty we were working shovelling cinders and decided to go down and get a couple of sandwiches and on the way down Sgt. Stoutley stopped us.
Q82 - How far away were these sandwiches?
A82 - About fifty yards, I think. Sgt. Stoutley stopped us and asked where we were going and we said we were going down to get a couple of sandwiches. He said "You can't go down there" so we turned back to our work and we were standing there waiting for the wheelbarrow to come back and Sgt. Stoutley said "You two bastards better get back to work." We kept on working and a few minutes later went back down the hill to get some sandwiches.
Q83 - Was there anybody down there?
A83 - Yes, sir, three or four other fellows.
Q84 - Eating sandwiches?
A84 - Yes, sir.
Q85 - What happened then?
A85 - We came back.
Q86 - How long would that take?
A86 - About fifteen minutes.
Q87 - You went back and continued to work?
A87 - Yes, sir.
Q88 - Is that all that you have to say?
A88 - Yes, sir.
Q89 - I want to review what you said. You started to go down for sandwiches and the first time you were stopped by Sgt. Stoutley and you went back to work and when you had a break you went down and got them and returned?
A89 - Yes, sir.
Q90 - After you returned you continued to work?
A90 - Yes, sir.
Q91 - Were you with the accused all the time; were you working together?
A91 - We were working together all the time.
Q92 - At any time did you hear Sgt. Stoutley place this man under open arrest?
A92 - No, sir.
Q93 - Had the accused been drinking at all; was there any evidence that the accused had been drinking?
A93 - No, sir, there wasn't.
Q94 - When Sgt. Stoutley told you to get back to work did he do it in what you would consider to be a usual army command or what did he say?
A94 - He just walked up and said "You two bastards better get back to work."

Cross-examination by the prosecutor.

Q95 - You say that you and Rutledge were working together all the time?
A95 - Yes, sir.
Q96 - When you say "all the time" what time would that cover?
A96 - Well, all afternoon we were working together.
Q97 - You were working on it all day, were you?
A97 - About ten in the morning we started.
Q98 - Until when?
A98 - About four-thirty.
Q99 - And you were on the job all that time?
A99 - Except for the time we went down for sandwiches.
Q100 - You are also telling me that you were with Rutledge all that time?
A100 - We were working together.

Q101 - Did you go for sandwiches together?
A101 - Yes, sir.
Q102 - Were you put under arrest at any time during that day?
A102 - No, sir.
Q103 - You weren't?
A103 - No, sir.
Q104 - Were you later charged with any offence arising out of what you did that day?
A104 - I didn't know until next day.
Q105 - You weren't put under arrest at all?
A105 - No, sir,
Q106 - When were you charged?
A106 - The next morning.
Q107 - On what charge?
A107 - Absence without leave and disobeying an order.
Q108 - What happened?
A108 - I got ninety days.

Questions by the President.

Q109 - Did you, while you were with Rutledge, hear Sgt. Stoutley inform Rutledge at any time that he was going to lay a charge against Rutledge?
A109 - No, sir, I didn't.
Q110 - He never mentioned charging a man for any offence?
A110 - No, sir. I did hear him say about losing a lot of pay.
Q111 - How far away from them were you?
A111 - About two or three feet.
Q112 - So you could hear?
A112 - Yes, sir.
Q113 - And you didn't hear him say he was going to lay a charge or place him under arrest of any description?
A113 - No, sir.

Second witness for the defence, B-73936, Pte. Rutledge, C.G., 48th Highlanders of Canada, being duly sworn, is examined by the defending officer.

Q114 - Rutledge, I would like you to tell us your story of events on the 4th December?
A114 - There were twenty-five men taken from "C" Company to Cormonger where they were constructing a new Canadian glasshouse and as far as I knew Sgt. Stoutley was our sergeant. We got turned around quite a bit and the company arrived on the job sometime between ten and eleven and proceeded with the work. It was coming around to dinner time and I had a couple of chocolate bars with me and I ate those in preference to sandwiches and returning to work after dinner I was put on the job of shovelling cinders. Pte. Scott was with me practically all day and during the afternoon we seen several boys going down for sandwiches and they were fifty yards away over the brow of the hill. We weren't trying to pull a fast one and we went by where Sgt. Stoutley was standing. He stopped Scott and myself and I told him we were going for sandwiches and that I hadn't had any dinner. He said I should have eaten at dinner time and to go back to work. We went back to work and Sgt. Stoutley came up behind us and said "Come on you two bastards, get busy." I had to wait for a wheelbarrow and it made me peeved by being told that by an N.C.O. I have known Sgt. Stoutley for some time and he came from my home town and we returned to our duty. During the afternoon Sgt. Stoutley and I had no conversation whatsoever and he made no more statements about what we should do and shouldn't do and I didn't know I was on a charge until the following day when we moved to the coast. I didn't know I was on a charge although it was rumoured around that I would be on court-martial. The day after we arrived at the coast I was brought up by the C.O. and there were several other charges they couldn't prove and I was remanded for court-martial without being given a chance to speak. I asked for a chance to explain and said about Sgt. Stoutley calling us bastards and the CO. said he probably had good cause to and that I was remanded for court-martial. That was all that took place.

Q115 - When you went down to get sandwiches were there other people down there?
A115 - Yes, sir.
Q116 - How many?
A116 - Two or three.
Q117 - And other people had been going down?
A117 - Yes, sir.
Q118 - Were they put on charges?
A118 - No, sir.
Q119 - About this business of drinking, had you anything to drink?
A119 - No, sir, the nearest place I could think of to get a drink would be Redhill.
Q120 - Did you offer the sergeant a drink?
A120 - No, sir.
Q121 - Had you anything to drink the night before?
A121 - Yes, sir.
Q122 - When?
A122 - Near our company billets was a little pub and it was quite handy and the gang was in nearly every night.
Q123 - Were you late for parade in the morning?
A123 - No, sir.

Cross-examination by the prosecutor.

Q124 - You said you decided not to have any lunch and to eat chocolate bars is that correct?
A124 - Yes, sir.
Q125 - Subsequently you decided that you did want lunch?
A125 - I returned to work and found that a couple of chocolate bars wasn't enough and other people were eating and it naturally made me hungry and I couldn't see any reason for not going down.
Q126 - You and your friend Scott took it on your own hook to go down for food.
A126 - Sgt. Stoutley was standing beside us and we didn't feel we were doing anything out of the way and we were going directly past him when he stopped us.
Q127 - Were you going to ask him?
A127 - No, sir, but I didn't feel that we were doing anything out of the way.
Q128 - You knew how many men there were?
A128 - Yes, sir.
Q129 - And you knew how many N.C.O's?
A129 - Yes, sir.
Q130 - And you and Scott were trying to take advantage of the situation?
A130 - No,sir.
Q131 - Then how do you account for leaving to go for sandwiches?
A131 - Sometimes five or ten minutes elapsed before the wheelbarrow returned. As a matter of fact we were back to work before the wheelbarrow returned.
Q132 - Is that what you usually do on fatigue; leave your work?
A132 - No, sir.
Q133 - You say you were not doing any drinking that day at all?
A133 - No, sir.
Q134 - Have you any way of accounting for the fact that you and Scott were charged and not anybody else?
A134 - No, sir, except that I had a clean sheet during all my service and then I got into domestic trouble at home and I wrote a letter and my wife tried to fix things up for me and my company commander, Major Merritt,was picking on me. I felt I was being pushed on several occasions. A good example is the case of court-martial.

Re-examination by the defending officer.

Q135 - I would like to hear a little more about this persecution you speak of.
A135 - I was given twenty-eight days detention for my first crime of any importance in the army and during my detention I taught myself signalling.
Q136 - During your time off?

A136 - I was working in the Sergeants' Mess and got permission from the R.S.M. to study at night.
Q137 - Was it customary for people in detention to work there?
A137 - People they felt they could trust, we were put in the kitchen and the others were out under escort digging.
Q138 - You taught yourself signalling.
A138 - Yes, sir, and what I knew about it was satisfactory to the Signal Officer and he said he would give me a break and I went to Major Merritt and he said it would be necessary for me to prove myself and later in November I went and asked for a week-end pass and he told me I had a nerve asking for a pass and as long as he was in command I wouldn't get one and if I came on parade with as much as a shoelace undone I would be for it. I tried to get a transfer to the pioneer platoon and he refused to accept a man in exchange for me and he refused to let me go.

Questions by the Court

Q139 - What time did you go back to work after the regular break for dinner?
A139 - About 1330 hours.
Q140 - About 1430 hours you were going for sandwiches?
A140 - Yes, sir.
Q141 - You made a statement that you saw other people eating sandwiches?
A141 - Yes, sir.
Q142 - How was it you were able to see them?
A142 - They were getting them from about thirty yards away over the brow of the hill and from where we were we could see over the brow of the hill.
Q143 - One of the reasons you went was because other people were eating them?
A143 - Different ones were coming back with sandwiches and pieces of cake and I thought it would be alright if the rest had it.
Q144 - How long have you been in the army?
A144 - January 10th I enlisted, sir.
Q145 - Have you been told of the method of redress for grievances?
A145 - Yes, sir, you can take it to the O.C. of the regiment.
Q146 - I would like to know the distance the sandwiches were from where you were working?
A146 - Approximately fifty yards from the point where we were working on the side of the hill. They were on a pathway where we had taken our equipment off and we had gone up the hill and were working over the brow of the hill.

The first witness for the prosecution, B-73262, Sgt. Stoutley, E.E., 48th Highlanders of Canada, is recalled by the prosecutor and re-examined.

Q147 - Did you call either Pte. Scott or Pte. Rutledge a bastard at any time?
A147 - No, sir.
Q148 - How far were these sandwiches away from the cinder pile?
A148 - I couldn't exactly say, but I figure about 300 yards, sir.
Q149 - Going right over the brow of the hill, is that the shortest route?
A149 - It could be, sir. I just went down the same way myself.
Q150 - Was Scott with Rutledge during the whole of that day?
A150 - Yes, sir.

The defending officer declines to cross-examine this witness.

Questions by the Court.

Q151 - You say the distance the sandwiches were from where they were working, you say that distance was about 300 yards? Would that by normally direct?
A151 - You would have to go a bit around; there was a path.
Q152 - It could be shorter? That is, if you went over the top?
A152 - Yes, sir. I would say by going over the top it would be a hundred yards shorter.

Q153 - When these men passed you, where were you on the hill?
A153 - I was back in the opening where they were building the camp and you had to walk around the opening and then down around the side of the hill. The camp was built on the side of the hill.
Q154 - Going from the cinder pile to you to the sandwiches, how far was that; what would be the distance?
A154 - I imagine about a hundred yards, sir.
Q155 - How long did you say they were away?
A155 - About half an hour to an hour I wouldsay, sir.

Defending Officer -- I would like to point out that we have two witnesses who disagree with Sgt. Stoutley's evidence. In the first place he said he was standing in the one place and the two witnesses said he came to them at the cinder pile. That seems to be the more reasonable way of watching over things; he couldn't stand stationary. If these men were away between half an hour and an hour and Sgt. Stoutley who was in charge didn't go down and see where they were it seems a funny thing to me as he said he placed them under open arrest when they went down the hill and they were absent half an hour or an hour and he didn't worry at all. I think you would give any N.C.O. of yours a severe going over for doing exactly that same thing. The evidence brought forward shows that others were eating sandwiches at the same time. If I could have brought in Pte. McLean, who is in hospital, he would have been able to verify that fact. I fail to see where wilful defiance of authority has been proven. As far as disobeying a lawful command is concerned they were carrying on in the same manner as the rest of the fatigue party were carrying on. They went and got a sandwich and came back as the rest of the fatigue party were doing. The summary of evidence shows that the accused got sandwiches and came back eating them and went to work. I think the general picture seems to tie into this. If you believe the story that Sgt. Stoutley told them to go to work and called them bastards, and that Rutledge replied to him at one time saying "If we don't fucking well eat we don't fucking well work," I think this seems to be the usual word to be used in and around the barrack room and is commonly used as an adjective and is not addressed to anyone and I think it should be considered as such. I don't think the wording of the phrase is sufficient evidence, I have heard hundreds of soldiers use the very same thing and it didn't mean anything. Up until a quarter to ten the defence did not have this charge-sheet and we have not had a chance to prepare on the alternative charge, but we are anxious to get the case cleared up. As far as we can see, the accused was carrying on his duties and doing his job the same as the remainder of the fatigue party. The sergeant says he placed him under open arrest and two people were there and they say there was no suggestion of him being placed under open arrest. We will have to bring the third charge in here and you will note that he was charged with being absent without leave and the charge doesn't say while under open arrest. There is no place in the summary of evidence that would suggest that the man was placed in open arrest. The company was warned that they were c.b. on the 4th December.

Prosecutor -- The defence is apparently basing their case on the fact that there was negligence on the part of Sgt. Stoutley. I might remind the Court that there were fifty men and two N.C.O's. To my mind these two men were taking advantage of the situation. They say that other men were eating sandwiches, but there is no evidence to show that they were not brought in their pockets from lunch. It is unfortunate that McLean could not be here. He was available ten days ago but I learned this morning that he is in hospital and could not be here. Even if these men were the only ones misbehaving, certainly a sergeant couldn't very well put half a fatigue party under arrest. A further position of the defence is the fact that they were called bastards. That is denied by Sgt. Stoutley and they were not justified in acting in the way they did. As far as the new charge-sheet is concerned that apparently was overlooked in my absence. I just came back shortly after nine this morning and the charge under Section 9(1) was in the hands of the defence a matter of twelve days ago. In connection with the third charge, it is submitted that "when in arrest" means "close arrest". I might also mention that the summary of evidence is not before the Court in this case.

It is only used before the Court in order to check a contradictory statement by a witness. Going back to the six different ingredients, that the command was a lawful one doesn't need much elaboration. The man was ordered to shovel cinders on fatigue. Secondly, that command was given personally by Sgt. Stoutley and Sgt. Stoutley has testified to that. Sgt. Stoutley is, of course, their superior officer and Sgt. Stoutley was in the execution of his duty because he was in charge of the fatigue. This man admits to being in the army for approximately thirteen months and he was told to do this job and it certainly was physically possible. Then the last element, that of wilful defiance of authority. That is not only proved by the fact that he lay down his shovel and left the cinders and, although he had had a previous opportunity of obtaining lunch, said "If we fucking well don't eat, we fucking well don't work." Apparently that was the attitude of the accused all the way through and there were only two N.C.O's for fifty men. I submit that the prosecution has proved its case.

The Court is adjourned for luncheon.

Prosecutor -- In connection with the alternative charge under Section 9(2) I would like to produce my witnesses.

First witness for the prosecution, B-73262, Sgt. Stoutley, E.E., 48th Highlanders of Canada, being recalled, is examined by the prosecutor.

Q156 - Sgt. Stoutley, you have given evidence against the accused on the charge under Section 9(1) of the Army Act, is there anything you wish to subtract from that evidence, or add to that evidence; we are now dealing with Section 9(2) of the Army Act.
A156 - No, sir.

Cross-examination by the defending officer.

Q157 - You made a statement that on the 4th December you were duty company?
A157 - Yes, sir, that is what I understood, sir.
Q158 - Did you take any particular care to find out whether you were?
A158 - I understood we were duty company for the day, sir.
Q159 - Have you any reason to change your mind at all now; it has quite a bearing on the case?
A159 - I understood we were duty company but I was speaking to Sgt. Waite at noon and I found we were standing by and not duty company.
Q160 - I suggest that if you don't remember whether or not you were duty company you are not able to remember the balance of the facts.
A160 - If I wanted to charge a man it would have no bearing whether we were duty company or not.
Q161 - I think it does affect your credibility.
A161 - It was just a misstatement, sir, I was pretty certain we were duty company.

Re-examination by the prosecutor.

Q162 - You have not since consulted Part I Orders as to whether or not you were duty company?
A162 - No, sir.

Second witness for the prosecution, B-73169, Cpl. Newton, F., 48th Highlanders of Canada, being duly sworn, is examined by the prosecutor.

Q163 - I want you to tell the Court as briefly as possible the events that took place on the 4th December. The accused is being tried under Section 9(2) of the Army Act (Reads charge). Would you tell the Court what you know relative to these events.
A163 - On the 4th December Rutledge was on a fatigue party at Cormongers and Sgt. Stoutley met him going by and asked him what he was doing.
Q164 - Were you present?
A164 - Yes, sir. He said he had finished his task and Sgt. Stoutley told him to go back and shovel cinders. He did go back and shovelled only a few minutes and started walking away from his task.

Q166 - Where were you?
A166 - Standing beside Sgt. Stoutley. Rutledge said he was going to have something to eat because he had no dinner and Sgt. Stoutley told him to go back and finish his task and Rutledge proceeded to throw down his shovel and went down for something to eat.
Q167 - Do you remember his exact words?
A167 - I couldn't exactly swear to his exact words, I think he said he wouldn't do any more fucking work until he got something to eat.
Q168 - Then what happened?
A168 - Sgt. Stoutley ordered him back to work and he refused to go and went down to eat.
Q169 - Did he eventually come back?
A169 - Yes, sir.
Q170 - Were you with Sgt. Stoutley all afternoon?
A170 - Yes, sir, and one of the Engineer officers.
Q171 - Did he ever finish his share of this work?
A171 - Well, he finished it in a way, but not his share of the work; after he told him to go back to finish shovelling he picked up a wheelbarrow and started wheeling cinders.

Cross-examination by the defending officer.

Q172 - How long do you think Rutledge was away?
A172 - About an hour and a half.
Q173 - From when to when?
A173 - From 1400 hours to 1530 hours.
Q174 - Your picture of the thing is that he started down the hill to where the food was and Sgt. Stoutley stopped him?
A174 - That was before he got as far as the hill.
Q175 - He said he didn't have a job to do?
A175 - He did have one to do.
Q176 - Did he start to work at the task Sgt. Stoutley gave to him?
A176 - Yes, sir, he started to work.
Q177 - Where did Sgt. Stoutley go?
A177 - He was standing about fifteen or twenty yards away.
Q178 - He stood there all this time?
A178 - Yes, sir.
Q179 - Eventually Rutledge proceeded with his work?
A179 - Yes, sir.
Q180 - What happened after that?
A180 - We no sooner got back to where/were talking to the Engineer officer and Rutledge threw down his shovel and started down hill and he said he was going to get something to eat as he had had no dinner and he said he fucking well wouldn't work until he got something to eat.
Q181 - Did Sgt. Stoutley do anything about it at all?
A181 - He couldn't do very much about it at the time as he had fifty men to look after. Rutledge refused and went on down the hill.
Q182 - You are sure of that?
A182 - Yes, sir.
Q183 - He didn't say he was under arrest?
A183 - Not then, sir, but he did when he came back.
Q184 - He told him later in the afternoon, what time would that be?
A184 - About 1530 hours after Rutledge went down. I went down to see if my men were working and Rutledge was coming back then.
Q185 - He didn't go back to shovelling cinders?
A185 - He picked up a wheelbarrow and started wheeling cinders.
Q186 - Sgt. Stoutley told him?
A186 - He didn't report back to Sgt. Stoutley.
Q187 - Did Sgt. Stoutley tell him he was under arrest?
A187 - He said he was up for orderly room.
Q188 - You are sure of that?
A188 - Yes, sir, positive, sir.

Questions by the Court.

Q189 - Was Rutledge alone when he went past the sergeant?
A189 - No, sir, there was another man.
Q190 - Who was that man?
A190 - Pte. Scott, sir.

Q191 - Do you apply to give evidence yourself as a witness?
A191 - No, sir.
Q192 - Do you intend to call any other witness in your defence?
A192 - Yes, sir.
Q193 - Is he a witness as to character only?
A193 - Yes, sir.

First witness for the defence, Lieut. E.N. Harringdon, 48th Highlanders of Canada, being duly sworn, is examined by the defending officer.

Q194 - I would like you to tell the Court what you know about the accused.
A194 - I first knew the accused in the Infantry Training Centre in Toronto. We both joined the army in January as 48th Highlander reinforcements. About the beginning of February I was given my first platoon and Rutledge was in it. We had permanent establishment N.C.O's who were corporal and sergeants and our lance-corporals were picked from the smartest of the reinforcements. Rutledge was a reinforcement in my platoon. He was an exceedingly good and smart soldier indeed. I saw him on parade from, I suppose, early in February until the middle of July at Camp Borden when Rutledge went overseas to the regiment. During all that time he was certainly an exemplary soldier, very smart on parade and he had a very nice style indeed. I don't think I am particularly naive as far as people are concerned and I was shocked and surprised when I went down to Brighton and found my former N.C.O., Rutledge, under arrest, because he was certainly one of the smartest soldiers I had seen; a good man on and off parade. As far as credibility is concerned I would certainly be prepared to accept all his statements at their face value except so far as a man may make an honest mistake, but if he says a thing I am prepared to believe him.

Cross-examination by the prosecutor

Q195 - How much of the accused have you seen since he came over to England?
A195- Nothing here at all in England, except in the digger at Brighton.
Q196 - You don't know anything about his conduct since he left Canada?
A196 - Nothing except what I can give as hearsay evidence.

Defending Officer - I would like to point out the conflicting evidence. Sgt. Stoutley says that the man, after going away, went back to his shovelling. The Corporal says he didn't go back to his shovel. The sergeant says he was absent half an hour to an hour. The corporal says it was for an hour to an hour and a half.

Prosecutor - I have nothing to say except about the remarks of the defending officer. There have been discrepancies and there will always be slight discrepancies in regarding different events. The element of time enters into this and I would remind the Court that these events took place on the 4th December.

The Court is closed for the consideration of the finding.

President - From the evidence submitted, the Court finds you not guilty of the first charge or the alternative.

The Court proceeds to hear evidence in connection with the second charge.

The prosecutor proceeds to call witnesses.

First witness for the prosecution, B-72653, Sgt. Waite, C., 48th Highlanders of Canada, being duly sworn, is examined by the prosecutor.

Q197 - On this charge of absenting himself without leave the accused is charged with being absent from 1730 hours on the 4th December until 2230 hours the 4th December. Will you tell the Court of your personal knowledge of this charge?
A197 - On December 4th, prior to a move of the company, we were warned by the C.S.M. that the company was c.b. and that there would be a roll call that evening. When I took the roll call at 1700 hours Rutledge was absent.

Q198 - Is Rutledge in your platoon?
A198 - Yes, sir.
Q199 - When did you say you took the roll call?
A199 - At 1700 hours.
Q200 - When did you next call the roll?
A200 - I believe an hour or a little later after that. At 1800 hours or a little later and Pte. Rutledge was not in billet at any time until 2230 hours.
Q201 - When did you next see Rutledge?
A201 - At 1155 hours, sir, in bed sound asleep.
Q202 - When were you informed the company was c.b.?
A202 - At 1400 hours on company commander's parade.
Q203 - At 1700 hours when you called the roll was this fatigue back?
A203 - Yes, sir.
Q204 - Was anyone else absent that evening?
A204 - Not from my platoon, sir.
[illegible]

Cross-examination by the defending officer.

Q205 - You are sure it was at 1700 hours you called the roll?
A205 - Yes, sir.
Q206 - Because you said it was at 1730 hours in the summary of evidence.
A206 - I may have said that, sir.
Q207 - When the information was clear in your mind you said half past five instead of five o'clock?
A207 - When that summary of evidence was given it would be clearer in my mind. I haven't had an opportunity of having it read to me; it would likely be five-thirty.
Q208 - When you called the roll at 1730 hours they were c.b.?
A208 - The whole company was warned at company commander's parade at 1400 hours and we always knew when we were breaking off to warn the boys again.
Q209 - Then again, in the summary of evidence, you stated you again called the roll at seven-thirty instead of six o'clock as you said here?
A209 - I said about an hour afterwards.
Q210 - One hour afterwards would be six o'clock. Again I presume that is the correct time?
A210 - That would likely be more correct because that all happened last December.
Q211 - Normally if you didn't know about the c.b. you would think it perfectly alright to quit the barracks after coming in off fatigue?
A211 - Yes, I would say so, sir.

Re-examination by the prosecutor.

Q212 - I understand from you that Rutledge was not present at 1730 hours?
A212 - At my first roll call.
Q213 - And he was not present when again?
A213 - At my second roll call; 1930 hours.
Q214 - Did you make any effort to find Rutledge after the first roll call?
A214 - I went through the billet, sir, we were in a big house with several rooms and I checked his room and different rooms because I wanted to see if he was playing cards with the boys.
Q215 - Did you make another effort?
A215 - At 1155 I made a final check and found him fast asleep.

Questions by the Court.

Q216 - At the time he came off duty was there any dismissal parade?
A216 - I couldn't answer that, sir. I had nothing to do with the fatigue party. On these fatigue parties they usually draw them from the book by the duty roster and I had two men on fatigue that day so therefore those two men wouldn't be on the 1400 hour parade.
Q217 - Then the next time you would see those two men would be on the 1730 hour parade?
A217 - Yes, sir.
Q218 - When he was let go from that fatigue parade would he be warned?
A218 - Not individually. Prior to any move we make it is customary to have the company c.b.

Questions by the President

Q219 - How was the communication given that the company was c.b. Were the N.C.O's in charge of fatigues there?
A219 - No, sir.
Q220 - Have you any direct knowledge or information that these n.c.o's were warned to inform their fatigue parties?
A220 - No, sir, it wasn't in Part I Orders and it was given out by the C.S.M. and the n.c.o's in charge of the fatigues were not there.

Second witness for the prosecution, B-73262 Sgt. Stoutley, E.E., 48th Highlanders of Canada, being duly sworn, is examined by the prosecutor.

Q221 - Did you at any time tell Rutledge that he was under open arrest?
A221 - Yes, sir, I believe I gave that in evidence this morning.
Q222 - Did you release him later?
A222 - No, sir.
Q223 - Did anyone else release him?
A223 - Nobody could, sir.

The defending officer declines to cross-examine this witness.

Questions by the President
Q224 - Did you know during the afternoon that the company was c.b. that day?
A224 - I couldn't say whether I knew about it before, but I found out about it at five o'clock that we were.
Q225 - When you released them from fatigue you didn't warn them of a possible move?
A225 - No, sir.

Q226 - Do you apply to give evidence yourself as a witness?
A226 - Yes, sir.
Q227 - Do you intend to call any other witness in your defence?
A227 - Yes, sir.
Q228 - Is he a witness as to character only?
A228 - Yes, sir.

First witness for the defence, B-73936, Pte. Rutledge, C.G., 48th Highlanders of Canada, being duly sworn, is examined by the defending officer.

Q229 - Will you tell the Court what did happen when you went away after returning from fatigue?
A229 - Some time previous to this move to the coast I had a good watch in a jewellry shop getting it fixed and the only opportunity to get it was to get in before blackout and get the watch. We returned on the truck and were dismissed in the regular way to the billets and, without waiting for supper, I left and went to Reigate and returned by 1015 for regular roll call. The next morning Sgt. Waite told me I was on charge for a.w.l. I hadn't known anything about the c.b. and I made quite certain that I was back for the regular roll call that night and had no intention of going a.w.l.
Q230 - What time did you have to be in normally?
A230 - Ten-thirty, sir.
Q231 - Did anyone see you come in at 1030?
A231 - Cpl. Gunn.
Q232 - Was it a normal thing for people to leave billets as you did?
A232 - In many cases quite a number of boys had friends who invited them out for supper. We usually broke off at 1630 hours and that gave the boys ample time to meet their girl friends and boy friends and go for supper.

The prosecutor declines to cross-examine this witness.

Defending Officer - The only point upon this absence without leave is whether this man was placed under open arrest in the afternoon or not. He did quite a normal thing in going for his watch as the unit had been c.b. without his knowledge. The question of being under open arrest brings up the point I raised this morning. Mr. Howlett suggested it didn't matter and that it was a normal thing to charge him as was done. The

normal section under which to charge this man would be Section 22 rather than for absence without leave. Had he been in lawful arrest they would have brought in the more serious charge too. We have brought forth two witnesses to say that Sgt. Stoutley did not place the man under open arrest.

The Court is closed for the consideration of the finding.

The Court finds the accused not guilty of the second charge.

Lieut. D. Ivor, Records Officer, No. 1 Cdn. Inf. Holding Unit, is duly sworn.

Q233 - Have you any evidence to produce as to the character and particulars of service of the accused?
A233 - I produce A.F.B. 296 and M.F.M. 6 of the accused.
Q234 - Is the accused the person named in the statement which you have heard read?
A234 - Yes, sir.
Q235 - Have you compared the contents of the above statement with the regimental books?
A235 - Yes, sir.
Q236 - Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?
A236 - Yes, sir.

The accused declines to cross-examine this witness.

Q237 - Do you wish to address the Court?
A237 - (Rutledge) Sir, I realize, of course, that there is no excuse for absence without leave but I was remanded for Field General Court-Martial and it was quite a slap in the face and it was rumoured around that I would be given an awful riding and that, with domestic troubles at home, had me worried. I had been in detention seventeen days and hadn't seen an orderly officer or defending officer and the door was open one night and I took the opportunity to get away. I realize I must face the punishment. I have been in detention seventy days plus seventeen days before. I hope the Court will be as lenient as possible. I have been offered a transfer when I get out and intend to prove my worth as a soldier.

B-67300, Sgt. Kelly, T., No. 1 Cdn. Inf. Holding Unit, being duly sworn, is examined by the defending officer.

Q238 - You are at the present time in the provost corps of the No. 1 Cdn. Inf. Holding Unit?
A238 - Yes, sir.
Q239 - And you have been in touch with this man from time to time?
A239 - Yes, sir.
Q240 - What about his conduct for the past seventy days?
A240 - I am in charge of No. 2 Detention Block and I have had no complaints against the man. His conduct while a prisoner has been excellent. He is always clean and soldierly.

Lieut. E.N. Harringdon, 48th Highlanders of Canada, being duly sworn, is examined by the defending officer.

Q241 - Will you describe to us as best you can the mental state of the accused at Brighton while he was in detention?
A241 - I went in to see him at Brighton and he was in the detention barracks under arrest awaiting court-martial. He told me his whole long sad story and I gathered that he felt that somebody had been trying to pin one on him and he was for it, and I tried to cheer him up and told him that everything would be alright, as I thought it would, but he was sad about the whole thing and when he went I thought it was the end of a good man and it was a foolish thing to do, but in a way I understood why he had gone in spite of the fact that it was the worst thing he could have done.
Q242 - You think he was worried and when the opportunity came he buzzed off?
A242 - I think he felt desperate, but he did the worst thing he could do.

Defending Officer -- You have the man's conduct sheet and you will see that it is a good one. He is not in the habit of going absent without leave and as Sgt. Kelly says, he has been a good soldier in detention and I hope the Court will consider the 87 days he has spent in detention awaiting trial. He did come back of his own free will and we were rather in a dilemma because he came back here and at the time we would hardly take him into detention. He tried to get to the holding unit because he knew this was where he would come finally.

The Court is closed for the consideration of the sentence.

STATEMENT as to CHARACTER & PARTICULARS of SERVICE of ACCUSED

B-73936 Pte. RUTLEDGE, C.G., No.1 Cdn. Infantry Holding Unit.

1. The following is a fair and true summary of the entries in the regimental conduct sheet of the accused, exclusive of convictions by a court-martial or a civil court, and of cases in which trial has been dispensed with:

	Within last 12 months	Since Enlistment
Absence without leave	once	once
Conduct to the prejudice of good order, etc.	once	once

Number of instances of gallantry or distinguished conduct: Nil.

2. The accused is not under sentence at the present time.

3. The accused has not been previously convicted by a Court-Martial or a civil court.

4. The accused has been in confinement, awaiting trial on the present charges, for no days in civil custody, and 87 days in military custody, making a total of 87 days in custody, of which no days were spent in hospital.

5. The present age of the accused according to his attestation paper is 22 years.

6. The date of his attestation specified in his attestation paper is 5th February 1940.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 13 months.

8. The accused is entitled to deferred pay or gratuity in respect of 13 months' service.

9. The accused is entitled to reckon 13 months' service for the purpose of determining his pension, etc.

10. The accused is in possession of or entitled to no military decoration or military reward.

SCHEDULE

of convictions by a court-martial or a civil court and of cases in which trial has been dispensed with of the accused.

Nil.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

David Ivor, Lieut.

David Ivor, Lieut.,
Officer i/c Records,
No. 1 Cdn. Inf. Holding Unit

Witley, Surrey,
25th March, 1941.

Exhibit A.

No. R-7393 Name Rutledge C. Sqn., Battery, or Company HQ Coy 48th Highlanders of Canada Corps Date of enlistment G.C. Badges Service or Proficiency Pay M.F.M. 5 (A.F.B. 122) 5000m 1/42 (1160) H.Q. 1777-45-18

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. — Signature O.C. Company, etc. C.L. Merry Major — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	16 Aug 40	Pte	--	A.O.A.S. Absent (From) without leave from 2200 hrs. 16 Aug. 40 to 1000 hrs. 17 Aug. 40 Time 12 hrs. A.A. Sec. 1F	Sgt. White C.	Forfeits one (1) days pay under 40 F.D.R. I. Art. 145	19 Aug 40	Capt. MacKenzie	
In the Field	July	Pte.	--	A.O.A.S. Conduct to the prejudice etc in that he made false statements in letters written by him to Canada in July 1940 A.A. Sec. 40		Forfeits 20 (twenty) days pay 7 days detention (Aldershot) F.R.I. 149	9 Oct. 40	Lt. Col. Dunlap	Absent serve Southern Command Pte Rutledge was tried by Bn Court Martial because of sore throat

CERTIFIED TRUE COPY:-

... David Ivor, Lieut.

6th March, 1941

David Ivor, Lieut.,
Officer i/c Records,
No. 1 Cdn. Inf. Holding Unit.

Exhibit AA

(P.T.O.)

SUMMARY OF EVIDENCE

In the case of B-73936 Pte. Rutledge, C.G.

The Commanding Officer directs that the evidence shall be taken on oath.

Lieut. R.M. Dillon, No. 1 Canadian Infantry Holding Unit, being duly sworn, states:

I am Officer in charge of Records, No. 1 Canadian Infantry Holding Unit, and as such produce the following documents in evidence:

(a) Copy of the Record of the Declaration of a Court of Inquiry assembled at Kingswood, Surrey, on the 20th day of February, 1941, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B-73936 Pte. Routledge, C.G.

(b) Confession of the accused, No. B-73936 Pte. Rutledge, C.G.

These documents refer to B-73936 Pte. Rutledge, C.G., whom I now recognize.

..... Lieut.

(The accused declines to cross-examine this witness)

Certified that Rules of Procedure No. 4 (c), (d) and (e), have been fully complied with.

H.M. Howell, Lieut.,
Officer taking Summary.

Witley, Surrey,
10th March 1941.

Summary of evidence in the case of No. B-73936

Private Rutledge C.

48th Highlanders of Canada.

By direction of the Officer Commanding "C" Company 48th Highlanders of Canada, the summary of evidence is taken on oath in my presence 7th Dec 16.

[illegible] [illegible]

[illegible]
Capt.

[illegible]

19? witness for the prosecution

No. B-73169 Cpl. Newton F.

48th Highlanders of Canada

after having been duly sworn, states :- with on Brigade Fatigue

At Cormongers, at 1430 hrs., on 4th Dec. 40, Pte Rutledge was detailed to shovel cinders into the wheel barrows. At 1445 hrs. Pte. Rutledge threw down his shovel and proceeded to walk away from his task when he met Sgt. Stoutley who asked him where he was going. Pte. Rutledge replied "I am going to get something to eat as I had no dinner." Sgt. Stoutley told him to get back to work as the noon hour was the time to eat. Pte. Rutledge's reply was, "I am going to get something to eat before I do any more work", and proceeded down to the place where the fatigue party had eaten lunch. On his return, half an hour later, Sgt. Stoutley told him
him to take a wheel barrow and wheel cinders which he did. At 1530 hrs. Pte. Rutledge lay down his wheel barrow and demanded to go home and said " I have done enough work for one day". Sgt. Stoutley persuaded him to pick up the wheel barrow and continue as the Officer of the R.C.E's said we couldn't leave the job until 1630 hrs.

Every order Sgt. Stoutley gave Pte. Rutledge, he seemed to resent and carried it out in a slovenly manner.

Cross examined by the accused Cpl. Newton F.

Q. 1. This is the just charge against me, N.Q.A.S. Disobeying in such manner as to show a wilful defiance of authority, a lawful command given by his N.C.O. Is this charge correct Cpl. Newton.
A. 1. Quite correct.
Q. 2 You were in a position to see me working.
A. 2. Yes I was. I am with Sgt. Stoutley at all times.
Q. 3. Cpl. Newton can you give me any good reason if I was shovelling cinders, why I would throw down my pick when there were no picks on the job.
A. 3. I said in my evidence that you threw down your shovel.
Q. 4. Do you realize Cpl. that the statements that you made here are going to either put me in jail or suffer loss of pay and you are quite satisfied that they are true and correct.
A. 4. I am quite satisfied that they are correct.

2nd witness for the prosecution

No. B-73262 Sgt. Stoutley E.E.

48th Highlanders of Canada

after having been duly sworn, states:

Newton Brigade Police

At Cormongers, at 1430 hrs., on 4th Dec. 40. Pte. Rutledge threw down his shovel and came past where I was standing. I stopped him and asked him where he was going. This man had been drinking as he was very close to me, I could smell his breath and his eyes were sort of bleary. He said,"I am going down for a sandwich". I told him that from 1150 to 1300 hrs. was the lunch hour and if he had wanted to eat, that was the time to have done so. He then returned to his work where he stayed for a few minutes and then he dropped his shovel again and started off in the direction of where the packs and the remainder of the lunches were. I asked him where he was going again and he said he was going for a sandwich. I ordered him back to his work and he said," If we fucking well don't eat we fucking well don't work". He then went on down to where the sandwiches were. He returned with sandwiches, eating one of them and went back to his work. Later on about 1530 hrs. he was told to wheel cinders in a wheel barrow to a shack some distance away. About 15 minutes later I found his wheel barrow lying down on the ground inside the shack. I told him to pick up the wheel barrow and get back on the job, and he said we were supposed to quit work at 1530 hrs. and that if he did wheel the wheel barrow he did not care if there was anything in it or not. He then went on with his work.

E E Stoutley Sgt.
B73262

Cross examined by the accused

Q.1. What does alcohol smell like.
A.1. I have smelt alcohol in different beverages for the last ten years and I am quite familiar with the smell. At 1400 hrs. Pte. Rutledge came up and asked me if I wanted a drink and I declined
Q.2. Did I state what the nature of the drink was.
A.2. No.
Q.3. Could it have been for water.
A.3. I could not say.
Q.4. You said that my eyes were bleary, could not the sun or wind have done it.
A.4. There was no sun or wind that day.
Q.5. Were you with Cpl. Newton all the time this was taking place.
A.5. All except when the man asked me to have a drink.

A.D.

3rd Witness for the Prosecution

No. B-72633 S/t. Waite C.

48th Highlanders of Canada

after having been duly sworn, states:-

At Coneybury House, at 1730 hrs., on 4th Dec. 43., I called the roll in my platoon. All were present except Pte. Rutledge whom I reported to the C.S.M. At approximately 1930 hrs. I called a second roll of the platoon and found all present again except Pte. Rutledge whom I reported again to the C.S.M. [redacted] It was reported to me by Cpl. Gunn that he came in just before 2130 hrs. I went through the house around midnight and I looked in Pte. Rutledge's room and I found him fast asleep.

The Company had been warned that they were C.B. prior to a move.

Cross examined by the accused.

Q.1. What time was the Company warned that they were C.B.
A.1. The Company was warned at a Company Commanders Parade in the afternoon at 1415 hrs.

The accused having been duly cautioned in accordance with Rules of Procedure 4 (e)

Elects to make a statement.

The accused No. B-73936 Pte. Rutledge C. 48th Highlanders of Canada, States :-

" In reference to the evidence given and sworn to by Sgt. Stoutley and Cpl. Newton, there are a few points contradicting each others evidence. The cause of my becoming peeved and disobeying Sgt. Stoutley's orders was that he had deliberately called me a bastard".

" With reference to charge No. 2 , I returned from Brigade Fatigue at 1700 hrs. and left billets immediately, unawares of the fact that the Company had been warned by the Company Commander of being C.B. at 1415 hrs. I went to Reigate to get my watch and returned at 2215 hrs.

Pte C. Rutledge

Certified that Rule of Procedure 4 (D) (E) (F) have been complied with.
Taken down by me in the presence and hearing of the accused this Seventh day of December 1940. In the Field.

Signed [illegible]
Capt.

4/3·62

PTE RUTLEDGE H G W.

RECEIVED 1 SEP 1944 JAG MILITARY CMHQ

RECORDED AT CMHQ IN AB 160 43-62

FIELD GENERAL COURT-MARTIAL

CF ABS 1 (To 1000 CF ABS) 40-P.N.B./1868 (6000)

4 38B

Convened by Order No. ... Comd ... dated ...

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.

PROCEEDINGS REVIEWED 2 Aug 44

JAG 1.56

REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) ... on (*date*(s)) ...

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95 for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto. The Court is satisfied that it is properly convened and constituted(1), accused is (are) amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At ... hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: Do you object to ... as interpreter? Ans ...

~~The Interpreter is sworn.(1) Do you object to ... as shorthand writer? Ans ... The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans ...(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President		
Member		
Member		
Judge-Advocate		
Prosecutor		
Defending Offr		

Questions by President: Is the Prosecutor a lawyer? Ans ... Is the Defending Offr a lawyer? Ans ...(1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Off. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (E) and fn 2 were not followed. See CF p 3.)

A8. The accused ... before arraignment make(s) (no) (a) plea ...(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsF cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form ...

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85,85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)

(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (*or* ..) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 29(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 29(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or on character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans..... Do you intend to call witnesses on your behalf ? Ans..... Are they witnesses as to character only ? Ans.....

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 45, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans.....

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)

(1. MFB 335 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans.....(2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 128, 182, RP 46-50, 69, 116, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : K 68232 PTE HARRY GEORGE RUTLEDGE

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st (A) (S 6)	GUILTY	GUILTY	
2nd (A) (S 6)	GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 722, and in lieu of Kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 176 days, of which 176 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

TO SUFFER FIELD PUNISHMENT FOR 90 DAYS AND TO FORFEIT ALL ORDINARY PAY FOR A PERIOD OF 90 DAYS.

(Sgd) [illegible] 17 Oct 44 (Sgd) [illegible]

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed Ewth

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) Ewthawendy Brig.

Date 17 Oct 44 Commanding COMMANDER 1 CDN BASE SUB-AREA Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
K 68232. PTE HARRY GEORGE RUTLEDGE - 180 PRS.		P. W. Pitchlin Maj a.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

C H A R G E S H E E T

The accused, K68532 Private Harry George William RUTLEDGE, (Seaforth Highlanders of Canada), 2 Canadian Base Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field in Italy at about 0800 hours on 5th August 1944 absented himself without leave until apprehended at about 0905 hours 13th August 1944. (Total absence 8 days 1 hour and 5 minutes.)

SECOND CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field in Italy at about 1800 hours on 18th August 1944 absented himself without leave until apprehended at about 0015 hours 26th September 1944. (Total absence 38 days 6 hours and 15 minutes.)

(R. W. LEET) Lt.-Col.,
O.C., 2 Cdn Base Rft Bn,
1 C.B.R.D., Cdn Army, C.M.F.

In the Field
3rd October 1944.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
In Italy
10 Oct 44

(E. W. HALDENBY) Brigadier
Comd 1 Cdn Base Rft Gp
Cdn Army-CMF

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAM/1007 (2008)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K68532	Pte		Harry George William	RUTLEDGE	2 Bn 1 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 10 Oct 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial". GWH

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~) GWH

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ GWH

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

~~5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~ GWH

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	A M RUSSELL	(CIC)	1 Bn 1 CBRD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt or Lieut to be detailed by OC 2 Cdn Reallocation Centre		
" " " " " " " " " " " "		

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut to be detailed by OC 2 Cdn Reallocation Centre		

~~JUDGE ADVOCATE.~~ GWH

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (*Country.*)

Date 10 Italy

GWHardenby (*Signed personally. RP 105 fn 2.*)

(E. W. HALDENBY)

Brigadier (*Rank.*)

Commanding 1 Cdn Base ~~Sft Gp~~ Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

2 BN 1 CDN BASE RFT DEPOT

I certify that I have this morning examined

K-29532 P/O R. Rathbone W.

and he is fit to undergo trial by Court Martial.

13 Sept 44

Jam Lauda Capt

M.O. 2 Bn. 1 C.B.R.D.

PREG 14 MITIGATION

14 Oct 44

Mr President and Members of Court:

The accused K 68 532 Pte Harry Rutledge elected to plead guilty to the two charges of Absence Without Leave of his own volition. However, it is my opinion that there are circumstances that should be brought to your attention in connection with these offences which have a direct bearing upon them.

To be brief: When Rutledge was 4 yrs old his parents were divorced, his mother instigating the proceedings. Two yrs later she remarried leaving Rutledge with her father. He was none too happy with his step father and at the first opportunity, to be exact on March 27/41 when only 19 yrs old he enlisted voluntarily in the Army. Previous to this he had attended school in B.C. passing his Grade VIII Entrance Examinations at 17 then working for 1½ yrs as a manager and driver with the Local Road Co. Part of Rutledge's earnings took from his pre enlistment work and his Army pay have been given to his mother. This in spite of the fact that she has

53

born well provided for by his step father.

Rutledge joined the Legionaires in Oct 43 and was with them until wounded at Orlona on the 2nd of December of the same year. After convalescence he returned to his Unit in April 44.

Near the first of May he received two letters one from his mother and the other from a Dr. R. D. Wright. The substance of these letters is the same. It seems that his mother had become ill and on the advice of friends had visited Dr. Wright about 18 months ago. According to both, there ensued an mutual love. Dr. Wright is a married man.

In her letter Rutledge's mother tells him that she will take no action in regard to divorcing her husband until she hears from him, and begs his advice. Rutledge has both of these letters in his possession. Needless to say he brooded day on his mother's difficulties and was a timely anxious to get home. Near the end of May he was sent to hospital sick and subsequently here to #1 C.B.R.D. After five days here he went

E 3.

A.W.S. to Rome. His object in going there was to conduct funds in the American Ex Rome and obtain transportation home. His long absence was occasioned by the his constant efforts to effect this.

Admiralty Judge was very mistaken to have attempted to get home in this manner, but I submit that there are mitigating circumstances.

As his Record shows he has been in very little trouble until this episode he is thrifty and industrious. In this connection he has now £170 credit in his Pay Book. Very sensibly he admits his fault in this matter and begs for leniency.

There is no doubt, but that his love for his mother has embroiled him in his present difficulties.

A.A. Magdeburn Lt

SUMMARY OF EVIDENCE EXHIBIT F

Summary of Evidence in the case of K-68532 Pte RUTLEDGE, H.G.W., of the Seaforth Highlanders of Canada, on strength No. 2 Canadian Base Reinforcement Battalion, 1 C.B.R.D., a soldier of the Canadain Army, Overseas.

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION

M-50876 A/Sgt Larson, P., Seaforth Highlanders of Canada.

"Owing to the exigencies of the service the attendance of this witness is not in my opinion readily procureable. The accused does not demand his presance for the purpose of cross examination. A written statement of this witness's evidence purporting to be signed by him, marked Exhibit "A" signed by me and attached hereto."

.....
Officer detailed to take Summary

The accused declines to cross examine this witness.

SECOND WITNESS FOR THE PROSECUTION

Lieut D.A. Smith, Records Officer, No. 2 Cdn Base Rft Bn., 1 C.B.R.D., having been duly sworn states:

" I am Lieut D.A. Smith, Records Officer, 2 Cdn Base Rft Bn., 1 C.B.R.D. I produce a certificate of arrest as under section 163 (1) (jj) of the Army Act certifying that K68532 Pte Rutledge, H.G.W., was arrested at Rome at 0905 hrs, 13 Aug 44. (Marked Exhibit "B")
I also produce a certified true copy of a Declaration of a Court of Inquiry showing that K68532 Pte Rutledge, H.G.W., had absented himself without leave in the Field at 1800 hrs on 10 Aug 44, and that on 9 Sept 44 was still so absent. (Marked Exhibit "C"
I also produce a certificate of arrest as under section 163 (1) (jj) of the Army Act certifying that K68532 Pte Rutledge, H.G.W., was arrested in Rome at 0015 hrs, 26 Sept 44." (Marked Exhibit "D"

.....
Lieut D.A. Smith

The accused declines to cross examine this witness.

EXHIBIT F

The accused was cautioned as follows.

"Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or give any evidence unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence."

The accused declines to make any statement or give evidence on oath.

Certified that Rules of Procedure 4 (c), (d), (e) and (f) have been complied with.

I certify that the foregoing Summary of Evidence consisting of two pages, was taken down by me in the presence and hearing of the accused this 2nd day of October, 1944.

.....
(Officer detailed to take Summary)

In the Field,
2nd October, 1944.

(Exhibit 'A')

CANADIAN SOLDIERS' YMCA

ON ACTIVE SERVICE 6-8-44

K68532. Pte Rutledge. H. G.

Sir.

I M50876 A/Sgt Lawson P on the 5 August 44 at 2 dd hrs. when forming up the parade found the A/M absent of parade. and is still absent Sir.

Sgt Lawson P

A/Sgt Coy Sgt.

PLEASE WRITE ON BOTH SIDES

(Exhibit 8 A) 2865

Certificate in accordance with the Army Act Sec. 163 (1) (jj)

I certify that

No K/68532 Rank PRIVATE Name RUTLEDGE H.G.W.

of the SEAFORTHS OF CANADA

was arrested at ROME at 0905 Hrs.

on the 13th day of AUGUST 1944.

Signature of P. M., A. P. M., or other Officer into whose custody the above named person was taken on arrest. A P Hilton

Rank Captain

Appointment (if any)

Commanding 111 Provost Company, C.M.Police

Date 13th August 1944

PS68(T1)(5-44)(2,500)

Exhibit "C"

CERTIFIED TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the 9 th day of September 19 44, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. K68532 Pte RUTLEDGE, H. G. W.

DECLARATION

The Court declare that No. K68532 Pte RUTLEDGE, H. G. W.
"G" Coy, 2 Cdn Base Rft Bn., 1CBRD
illegally absented himself without leave In the Field
at 1800 hrs on the 18 th day of August 1944;
and that on the 9th Sep 44 he was deficient, and that he is still deficient of
the following articles:—

ARTICLES	100 %	VALUE 75 %		ARTICLES	100 %	VALUE 75 %	
Bonnet, Tam (1)	.60		45	Towel, hand (1)	.32		24
Jersey, Pullover (1)	1.94	1	45	Trousers, K. D. (1)	1.58	1	18
Trousers, Denim (1)	2.51	1	88	Shorts K. D. (1)	1.34	1	00
Socks (3 Pr)	1.29		96	Shirts, Bush (2)	3.50	2	62
Badges, Cap (1)	.07		05	Hosetops (1)	.43		32
Brushes, Clothes (1)	.48		36	Boots Ankle,(prs, 2)	10.92	8	18
Brush, Shaving (1)	.37		27				
Brushes, Tooth (1)	.11		08	TOTALS	$ 26.93	$ 20	19
Holdall (1)	.19		14				
Knife, Clasp (1)	.85		64				
Razor, Safety (1)	.06		04				
Vests, Cotton (1)	.36		27				

(Signed) J. H. SNELL Capt President

Signed at In the Field (Signed) E. R. STAUFFER Lieut Member

(Signed) J. J. MURPHY Lieut Member

this 9 th day of Sep 19 44

Signature of Commanding Officer (R. W. LENT) Lt.col.

Mil. Bk. 69
5500 Blks - 6-41 (1940)
M.Q. 1772-61-45

RECORD of the Declaration of a Court of Inquiry assembled at on the day of 19 , for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No.

DECLARATION

The Court declare that No. _____

_____

illegally absented himself without leave _____

at _____ on the _____ day of _____;

and that on the _____ he was deficient, and that he is still deficient of the following articles:—

ARTICLES	VALUE		ARTICLES	VALUE	

_____ President

_____ Member

Signed at _____

_____ Member

this _____ day of _____ 19 __

Signature of Commanding Officer _____

Mil. Bk. 40
1500 Bks.—6-41 (940)
H.Q. 1773-61-40

Exhibit 0

INVESTIGATED IN ACCORDANCE WITH Sec. 161 (3) (A) D.R.O. 39

I certify that No. K. 68532 Rank PTE.

Name HUTLEDGE.H.G.W. of the No. 8 COY. 2nd Bn. CANADIAN BASE REIN. DEPOT.

was arrested at ROME (place) at 0015 Hrs.

on the 26th day of September 1944.

SIGNATURE of P/S., C.M.P., or other Officer into whose custody the above named person was taken on arrest.

Capt.

Rank

Appointment (if any)

Commanding 'T' Provost Company C.M.Police.

Date 26th Sept'44.

ARMY FORM B.296.

EXHIBIT C.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
K68532	Pte.	Rutledge, H.G.W.	2 C.B.R. Bn.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary must be completed from the field conduct sheet.

The relative conduct sheet(s) mentioned should be produced in court with this statement and referred to in the proceedings.

† See para. 377, K.R., 1940.

* The entries herein required should agree with the entries in the conduct sheets, reference being given to the serial numbers of such entries, and it is not required to specify all offences, fully or fragmentarily recorded.

Instructions.—If the entries below do not agree, give the reasons. If drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	AA Sec 15-1 — 2 times	2 times.
For	AA Sec 40 — 1 time	1 time.
For	— time	time.
For	— time	time.
For	— time	time.

~~Number of instances of gallantry or distinguished conduct.~~

~~or~~

~~There are no entries in the conduct sheets of the accused.~~

2. The accused has not been previously convicted, ~~or~~

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 72 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, ~~or~~ The accused at the present time ~~is~~ under sentence for ~~beginning on the~~ day of

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 10 days in military custody, making a total of 10 days, of which Nil days were spent in hospital.

~~9.~~ The present age of the accused according to his ~~record of service / attestation paper~~ is 21 $\frac{287}{365}$ years.

~~10.~~ The date of his ~~commission / attestation~~ specified in his ~~record of service / attestation paper~~ is 27 Mar 1941

~~7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is~~

~~8. The accused is entitled to deferred pay or gratuity in respect of service~~

~~9. The accused is entitled to reckon service for the purpose of determining his pension, etc.~~

~~10. The accused is in possession of, or~~ entitled to, ~~no military decoration or military award (or is in possession of or entitled to claim any military decoration or award).~~ † C.V.S.M. & C.

~~11. (If the accused is a warrant officer.)~~ The accused before he was made a warrant officer last held the regimental rank of

~~12. (In the case of an officer.)~~ The accused holds in the army the rank of dated

~~and in his regiment (or corps or department) the rank of dated~~

(71/6230) W4 13882/144 125,000 6/42 A.A.&H.W.Ltd. Gp.688

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. 168522 Rank Pte Name Rutledge J.H.W. of 2 C.A.R.Bde Regiment (or as the case may be).

(INSTRUCTION.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
A.R.2				

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 5th day of Oct 1944

J.H. Rutledge Capt Adjt
Adjutant
2 Bn 1 Cdn Base Reinforcement Depot.

17. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of ... Date of Promotion

In the rank of ... years ... months

In the rank of ... years ... months

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information must be obtained from such sources as are available and the paragraph completed accordingly.)

27 Mar 1941 [illegible] Capt Adjt

MFM 6
(AFB 122)
10-PAM/156 (3488)

No K68532 Name RUTLEDGE, H. G. W. | Sqn, Battery, or Company Seaf of Corps C.I.C. C. | Date of enlistment 28 Mar 1944 | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No one | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	24 Mar 44	Pte		AA Sec 15(1) AWL 1 day 14 hrs		6 days forf of pay	24 Mar 44		Forf 2 days pay FR&I 149 (1)(a)
									Forf 6 days pay FR&I 149 (2)
Field	5 Jun 44	Pte		AA Sec 15(1) AWL 4 hrs AA Sec 40		14 days CB & 14 days forf of pay	5 Jun 44		Forf 14 days pay FR&I 149 (2)

Certified True Entries Taken from MFM 4.

Signed "W.H.Laughlin"
(W.H.Laughlin) Lieut,
for Officer i/c,
Cdn Sec GHQ, 2nd Ech.,
A.A.I.

(PTO)

No K68532 Name RUTLEDGE, H. G. W. | Sqn, Battery, or Company | Seaf of C. | Corps C.I.C. | Date of enlistment 27 Mar 1941 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 30/PAS/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No one | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	24 Mar 44	Pte		AA Sec 15(1) AWL 1 day 14 hrs		6 days forf of pay	24 Mar 44		Forf 2 days pay FR&I 149 (1)(a)
									Forf 6 days pay FR&I 149 (2)
Field	5 Jun 44	Pte		AA Sec 15(1) AWL 4 hrs AA Sec 40		14 days CB & 14 days forf of pay	5 Jun 44		Forf 14 days pay FR&I 149 (2)

Certified True Entries Taken from MFM 4.

Signed "W.H.Laughlin"
(W.H.Laughlin) Lieut,
for Officer i/c,
Cdn Sec GHQ, 2nd Ech.,
A.A.I.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with Punishment	By whom awarded	Remarks
				Certified true copy from the regimental books in my custody					

LIST of WITNESSES
in the case of

K-68852 Pte Rutledge, H.G.H.

For the Prosecution:

(1) M-50876 A/Sgt Larson, P., Seaforth Highlanders of Canada

(2) Lieut D.A. Smith, Records Officer, 2 Cdn Base Rft Bn., 1 C.B.R.D.

(3)

For the Defence:

(1) N I L

LIST of EXHIBITS
in the case of

K-68852 Pte Rutledge, H.G.H.

EXHIBIT "A" - Statement of Evidence (written) by M-50876 A/Sgt Larson, P.

EXHIBIT "B" - Certificate of Apprehension of K68852 Pte Rutledge, H.G.H.

EXHIBIT "C" - Certified true copy of a Declaration of a Court of Inquiry.

EXHIBIT "D" - Certificate of Apprehension of K68852 Pte Rutledge, H.G.H.

I, K-68852 Pte Rutledge, H.G.H.

2 Cdn Base Rft Bn, 1 C.B.R.D., request that .....

~~(not)~~ an officer be appointed to represent me at my trial by Court Martial.

Date 2 October 1945. .....
K-68852 Pte Rutledge, H.G.H.

I certify that I have been given gratis, a copy of the Charge Sheet, a copy of the Summary of Evidence, a copy of the List of Witnesses, and a copy of the List of Exhibits pertaining to my trial by Court Martial.

Date 2 October 1945. .....
K-68852 Pte Rutledge, H.G.H.

VV-67

PTE RUTLEDGE J.

VV-67

FIELD GENERAL COURT-MARTIAL

(GRAMS 139 (MM) OF AFAO 10 PAGE 10, 1939)

Convened by Order of Major General C. H. M. Burrows Comd 2 Cdn Div dated 12 Nov 43

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptnt, A/rank or A/apptnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptnt, A/R or A/Apptnt.	Full Christian Names.	Surname.	Unit.
B76343	Rte	James	RUTLEDGE,	2 Cdn Div Sig Regt (Sig Sect R)

Proceedings Reviewed

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) England on (*date(s)*) 15 Nov 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML p 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 14.35 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~an interpreter?~~ Ans ~~—~~

~~The Interpreter is sworn.(1) Do you object to an shorthand writer?~~ Ans ~~—~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J. Campbell	Calgary Highlanders (MG)
Member	Capt	S. M. Burris	18 Fld Ambulance
Member	Lieut	H. C. Stewart	Toronto Scottish Regt
~~Judge Advocate~~			
Prosecutor	Capt	J. H. A. Regan	Toronto Scottish Regt
Defending Offr	Lieut	J. K. Kidd	Toronto Scottish Regt.

~~Questions by President:~~ Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

~~A8. The accused before arraignment make(s) (no) (a) plea~~ (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 2.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see* RP 35(C). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see* RP 35(A). *As to plea when sentence may be death see* RP 35(D).

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No .....(1)
(1. *If "yes", see RP 39(A) for procedure.* 2. *Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (~~no~~) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the First, Second & Third charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ~~Second~~ First, Second & Third charge(s), and allowed on the First, Second & Third charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (~~are~~) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans No ..... Do you intend to call witnesses on your behalf ?
Ans Yes ..... Are they witnesses as to character only ? Ans No .....
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(6).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the Third charge(s), being subject to confirmation, will be promulgated later.(1)
~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~
(1. *AA 54(3) (b), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. ~~President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?~~(1)
Ans ~~Not~~
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A & B respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes.
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) 7.1.(P)
(1. *When several accused tried separately see RP 120A. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2323. MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B76343 Pte James RUTLEDGE, 2 Can Div Sp Bn (Seaforth R)

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Not Guilty	
2nd	Not Guilty	Not Guilty	
3rd (alternative)	Not Guilty	Guilty	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 86, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and as to loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or ~~AF B296~~.)

Time in confinement awaiting present trial—a total of 17 days, of which Nil days were spent in hospital.(2)

(2. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

20 days detention

(Sgd) ..... Judge-Advocate, if any. 17 Nov 43. Date awarded. (Sgd) Major Maj Comp President. (RP 45, 90.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: ~~AA 54(2), RP 120(G)~~. If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) ..... Maj-Gen Comd 2 Can Div

Date ..... Commanding ..... 22 NOV 1943 Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
B 76343 Pte Rutledge. J.	23 Nov 43.	Lieut Colonel Comd 1 Can Corps Depot

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

JAG BRANCH - REVIEW RECORD

Accused

B 7634 3 Pte Rutledge J.
2 Cdn Div Sp Bn (Sea Rs)

Remarks	Date
Trial in (Country) Engl.	15 Nov 43
Charges Sec 19 etc	
Sentence 20 days detn	17 Nov 43
Rec'd from CR at JAG Branch	29 Nov 43
To EPC for (pre)(post) rev	30 Nov 43

Recommendations by [illegible]

(1) Pass and record.
(2) ~~Ltr on irregularities~~
(3) Quash _____ charge(s).
(4) _____

Ret'd to JAG Rev 1 by [illegible] 1 Dec

Passed to _____

Passed to _____

To AG 5 for _____

Ret'd from AG 5 to JAG Rev 1 _____

Instrs by JAG Rev 1 on disposal

Record & File [illegible] 1 Dec 43

_____

Instrs completed by _____

CHARGE SHEET

No B.76343 Pte JAMES RUTLEDGE of the 2 Cdn Div Sp Bn (Tor Scot R), as a soldier on active service with the Canadian Army (Active Force) is charged with:-

First Charge
A.A. Sec 19

DRUNKENNESS
In that he, on the London-Brighton train at about 2315 hrs 31 Oct 43, was drunk.

Second Charge
AA Sec 41

Committing a civil offence, that is to say
COMMON ASSAULT
in that he, on the London-Brighton train at about 2315 hrs 31 Oct 43, assaulted Pamela MacDonald, of Haywards Heath, Sussex, a passenger on the said train, by touching her against her will.

Third Charge
A.A. Sec 40
(Alternative)

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE
In that he, on the London-Brighton train at about 2315 hrs 31 Oct 43, interfered with and caused annoyance to Pamela MacDonald, of Haywards Heath, Sussex, a woman passenger on the said train.

E G Johnson

(E G Johnson) Lt Col
Comd-2 Cdn Div Sp Bn (Tor Scot R)

Field
4 Nov 43

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
12 Nov 43

(E L M Burns) Maj-Gen
Comd - 2 Cdn Div

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this day examined No. B/9242

Private RUTLEDGE, James and find him FIT to undergo trial by Court Martial.

(Medical Officer).

Date 15 Nov 43

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this day examined No. B76343

Pte Rutledge J. and find him FIT to undergo trial by Court Martial.

(Medical Officer).

Date 17 Nov 43

X

FIELD GENERAL COURT-MARTIAL

CFA55 (In lieu of AFA3)
40/PAM/1697 (2668)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 76343	Pte		James	RUTLEDGE	2 Cdn Div Sp Bn (Tor Scot R)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(X) named above as the accused, being subject to military law, has (XXX) committed the offence(s) set forth in the Charge Sheet(X) attached and on (*date*) 12 Nov 43 endorsed by me, (XXX XXXXXXXXXXXXXX), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(X), and to consist of the Offrs appointed or detailed hereunder.

XXXXXXXXXXXXXXXXXXXX

Page 1

Summary of Evidence

13 Nov 43

216343 Pte Kellett, James

Q Were you relying on woman under
A I was on two but also on
that [illegible] on hand myself

Q Can you relate the men met
any charge
A I took off from and had
language and made to
insult me, I resented it
Q Acted in a manner
which I would not like to
see very often
Q Are you in any shape or
A Yes

Q Were there any other persons
in any saloon
A I don't think so. There were
two soldiers in [illegible] and
when lady went out there was
only one — and when men
got up they went to know
each other — The accused
was not the one on the floor
the one on the floor was one
of two that was arrested.

Defense Rests

Argt that charge be dismissed
Charge I — Not a case — value or kindness
of a Civil Crime — Mrs Mac Pounds
only claim Blurred effect
Charge II — No identification of arms
with disorderly woman
Charge III — No identification in darkness
of who did any act.

(5th witness for defence)

B76310 Cpl Peacock W sworn states

I was on the London - Brighton train the night of the 31st of October. I sat ~~opposite~~ across the aisle from the witness and the night the English Major sat three or four seats down the car. To my knowledge the witness and the Major were sober. I was talking to them during the trip except for a short interval before reaching Redhill at that time I ~~was~~ spoke to them but received no answer. When the light came on at Redhill I moved down the aisle and later saw them being taken off the train by military policemen.

Prosecution questions:

Q It is possible for people to talk on trains unless you are running them.

A Yes - but I was the only person across

7 h. and 6

Q Did you hear a lady say
shut up - or get up and run
if so is it possible you could have
run home and back without being noticed
etc.

A No.

Court - Did you see any body with a
flashlight move up or down
etc.

A No

Q Is Pte Rutledge of good character
as a regards how do you
know etc I don't know

A Pte Rutledge offered cigarettes
and the lady lit up of
course I do not see that
anything wrong

Q You are not sure that the
lady smoked her own cigarette or
Pte Rutledge's

A No.

Second witness for Defence

BROOKS Sgt Fireman E 4 sworn states
I was not on London Brighton
train. I was told to pick up
3 men from Kings Cross
the rest from work in my car
he has done his work in my car
and has only had one of his gloves
since being in my Platoon. He recently
transfered to our Platoon

Prosecution summoned

On identity Mrs Tomkinson Mrs
Marshall and Pte Pearce all
agree on seeing accused getting
off train from Penrith - also that
the train was dark and noisy

(over)

Mrs MacDonald said that there was no real doubt in her mind that accused put her hand on her throat and also crossed to her seat and [illegible] her

Major Tomkinson corroborates in main points Mrs MacDonald's statement as Cpl Pocock's statement. The contrary to both these statements. The actions of the accused were not of assault.

Charge [illegible] is borne out by lack of good conduct and military discipline on the actions of the accused

Finding & Defence

[illegible] Court should be unanimous in finding [illegible] not guilty as charged. Lack of identifying the accused. The woman said it was nothing serious but was prompted by a Major to take action. No authority as to what committed assault.

As to Statements as to Clarke and AFM 6 produced.

Note Accused claimed an error in AFM 6 Stonecross-14 Feb 42 - Para Punishment 1919 - Punishment Warning para Hours 4 & sec 40 punishment awarded 16 days detention and $10.00 fine 28 days detention

Statement by accused punishment awarded 168 hours detention and $10 fine

Campbell
Major

I request that an officer be detailed to assist me with my defence at my F G C M. If available I should like Lieut K Kidd, 2 Cdn Div Sp Bn (Tor Scot R)

James Partridge

LIST OF WITNESSES

Prosecution

L/Cpl D R Grimes, Corps of Military Police, Reigate, Sy.
Major J W Tomkinson, 1 Bn, The Worcestershire Regiment, Maresfield Camp, near Uckfield, Sx
Mrs Pamela MacDonald, 6 Mayflower Rd, Haywards Heath, Sx.

Defence

Sgt E A Tyreman, 6 Cdn Inf Bde Sp Gp (Tor Scot R)
Cpl William Peacock, 2 Cdn Div Sp Bn (Tor Scot R)

Statement of **EVIDENCE** in the case of :-

B.76343, PTE. J. RUTLEDGE,
"H" COY., 2nd CANADIAN DIVISIONAL
SUPPORT BN.,
6th INFANTRY BRIGADE GROUP,
CANADIAN FORCES OVERSEAS.

Sir,

At REDHILL on SUNDAY 31st OCTOBER 1943, at about 2325 hours I was on duty at REDHILL S.R. STATION, where I was summoned to No. 3 PLATFORM where the 2228 train from LONDON to BRIGHTON was standing. I there saw MAJOR J. TOMKINSON, 1st BN. THE WORCESTER REGT., MARESFIELD CAMP, UCKFIELD, SUSSEX, who informed me [illegible] 1940

I boarded the train and saw the above named soldier seated in the rear coach, accompanied by No. B.76266, PTE. WRIGHT T, of the same unit. MRS. P. MACDONALD of 6 MAYFLOWER ROAD, HAYWARDS HEATH, SUSSEX, identified the two men [illegible] 1940.

Statements were obtained from MAJOR TOMKINSON and MRS. MACDONALD, copies of which are attached.

I placed both men under close arrest and conducted them to the COMMAND GUARDROOM, where I handed them over to the GUARD COMMANDER to be detained.

REIGATE.
1 Nov 43.

L/Cpl.,
C.M.Police.
(D.R. Grimes).

REMARKS

Sir,

I have read over and corroborate the above statement.

REIGATE.
1 Nov 43.

L/Cpl.
C.M.Police.
(A.Warren).

Exhibit 'A'

CHARGE

Army Form B.252
(See King's Regulations)

TORONTO SCOTTISH Regiment

"B" COMPANY Battery / Squadron / Troop or / Company

CHARGE against No. B.76343 Rank PTE.

Name RUTLEDGE, J.

Place ? Date of Offence 31 OCT 43

OFFENCE W.O.A.S. Committing a civil offence, i.e. Common Assault, in that he on the LONDON-BRIGHTON TRAIN assaulted MRS. P. MACDONALD between 2300 and 2320 hrs.

H. Telespino
RANK

A.P.M. 157 H.Q. PROVOST COY.

Names of Witnesses:—
L/CPL. D. GRIMES, C.M.POLICE.
L/CPL. A. WARREN, C.M.POLICE.
MRS. P. MACDONALD. (Statement attached).
MAJOR TOMKINSON. (Statement attached).
CPL. V. MACAVOY, C.M.P.(V.P.) (Statement att.).

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

COPY.

Statement [illegible] by Major J.W. Tomkinson, 1st Bn. The Worcestershire Regiment, who states :-

On Sunday 31 Oct 43 I was travelling on the 1028 pm. train from Victoria to Haywards Heath.

On taking my seat I noticed two Canadian soldiers sitting in the row in front and on the opposite side of the compartment to me. A lady was sitting between the window and one of these soldiers. I observed almost immediately that the two soldiers appeared to be making a nuisance of themselves to the lady and they told her that she could go and sit somewhere else if she wanted to. [illegible].

Before the train pulled out of Victoria station the Air Raid Alert sounded and the lights of the train were all extinguished. During the course of the journey I overheard the lady asking the soldiers to shut up and behave themselves several times, but I could not hear any exact words of the men's conversation, either between themselves or to the lady, owing to the noise of the moving train.

A few minutes before reaching REDHILL I heard a final objection by the lady who was forced to leave her seat and stand in the corridor as a result of their behaviour.

I rose from my seat and shone my torch over in their direction. One of the men got up to follow the lady and immediately fell to the floor where he remained until arrival at REDHILL. I asked the lady if the two men were making a nuisance of themselves and she said yes, she thought they were drunk.

On arriving at REDHILL I asked a railway official to summon the Military Police and after some delay two Police arrived and I explained the reason I had sent for them. The lady, who by then was sitting in another coach identified the two men, who had been so objectionable, and the Military Police removed them from the train.

I am of the opinion that both the accused were under the influence of drink, and at the same time were acting in a manner contrary to the most elementary rules of decency.

(Sgd) JOHN W. TOMKINSON,
Major,
1st Bn. The Worcestershire Regt.

1st Bn. The Worcestershire Regiment.
Maresfield Camp.
1 Nov 43.

Exhibit B

P.T.O.

The above is a true copy of the statement taken down by me in my A.B. 466 and signed by MAJOR JOHN W. TOMKINSON in my presence.

REIGATE.
1 Nov 43.

L/Cpl.,
C.M.Police.
(D.R. Grimes).

COPY.

Statement [redacted] by Mrs. Pamela MacDonald (39), 6 Mayflower Road, HAYWARDS HEATH, Sussex.

who states :-

I boarded the train at VICTORIA at 2205 hours and took a seat in the PULLMAN COACH at the rear of the train on the EAST Side of the coach.

A few minutes later, two soldiers entered the coach. One sat down beside me and the other in the seat opposite. Immediately they sat down they endeavoured to start a conversation with me. I do not remember their exact words.

Before the train left VICTORIA, at about 2215 hours, the AIR RAID WARNING sounded and all lights were extinguished. Between EAST CROYDON and REDHILL STATIONS the soldier seated beside me put his arm around me, the other leant over and put his hand on my knee. I pushed both away from me. Shortly before reaching REDHILL the soldier beside me left his seat and went into the corridor. The other immediately left his seat, sat beside me, took hold of me and kissed me. I then got up and left the compartment. I stood in the corridor where I remained till REDHILL STATION.

I was addressed by an officer who asked if I had been molested. I replied that I had been. He then contacted the MILITARY POLICE. When the MILITARY POLICE arrived the officer asked me to identify the men in the presence of the MILITARY POLICE. This I did.

(Sgd) PAMELA MACDONALD.

I certify that the above statement is correct, made in the presence of SGT. EVANS and L/CPL. GRIMES, C.M.POLICE.

(Sgd) PAMELA MACDONALD.

6 Mayflower Road,
HAYWARDS HEATH, Sussex.

The above is a true copy of the statement taken down by me in my A.B. 466 and signed by PAMELA MACDONALD in my presence.

L/Cpl.,
C.M.Police.
(D.R. Grimes).

REIGATE.
1 Nov 43.

SUMMARY OF EVIDENCE in the case of No B.76343 Pte Rutledge, J, 2 Cdn Div Sp Bn (Tor Scot R), C.A.(A.F.).

1st Witness - L/Cpl D R Grimes, Corps of Military Police, Reigate, Surrey.
Owing to the exigencies of the service and the time and distance involved, this witness was not present in person. A statement of evidence of this witness is attached as exhibit "A" hereto. The abovementioned statement was read to the accused. The accused does not demand the attendance of this witness for cross-examination.

(J H H Depew) Capt

2nd Witness - Major J W Tomkinson, 1st Bn, The Worcestershire Regiment, Maresfield Camp.
Owing to the exigencies of the service and the time and distance involved, this witness was not present in person. A statement of evidence of this witness is attached as exhibit "B" hereto. The abovementioned statement was read to the accused. The accused does not demand the attendance of this witness for cross-examination.

(J H H Depew) Capt

3rd Witness - Pamela MacDonald, of 6 Mayflower Road, Haywards Heath, Sussex.
Owing to the exigencies of the service and the time and distance involved, this witness was not present in person. A statement of evidence of this witness is attached as exhibit "C" hereto. The abovementioned statement was read to the accused. The accused does not demand the attendance of this witness for cross-examination.

(J H H Depew) Capt

The accused was cautioned in accordance with R.P4(e) and declined to make a statement.

Taken down by me in the field this 3rd day of November, 1943, in the presence and hearing of the accused. Certified that rule of procedure 4 was complied with.

(J H H Depew) Capt
2 Cdn Div Sp Bn (Tor Scot R)

Field
3 Nov 43

CERTIFIED TRUE COPY

No B76343 Name Rutledge J | Sqn, Battery, or Company H | Corps 1 C.I.C | Date of enlistment 23Nov39 | GC Badges | Service or Proficiency Pay E ✓ 13

Date of last entry in Company Conduct Sheet 2-11-41 | No and date of last drunk (1) 16-2-40 | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc William Wallace, Capt

Place	Date of Offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershott	17-5-41	Pte	(2)	Drunkeness, AA Sec19	Documentary	Fined £5. FR&I 161(2)	19-5-41	Lt-Col Christie	
Aldershott	23-8-41	Pte		AWL 1 day 18hrs 40mins AA Sec15	CSM Farrel Cpl Yarick	14 days Det.	27-8-41	Lt-Col Carpenter	For 2days pay FR&I 149(1)(a)
Ewshott	2-11-41	Pte	(1)	AWL 7 hrs 15 mins AA Sec15(1)	L Cpl Williamson	Forf 4days pay FR&I 149(2)	4-11-41	Lt-Col Carpenter	
Stone Cross	24-2-42	Pte	(3)	Drunk AA Sec 19, Drinking during parade hours, AA Sec40.	Lt Cochrane	16 days Dtn Fined £10.FR&I 161(2)	27-12-41	Maj Roach	
Eastbourne	31-3-42	Pte		Failed to rise at reveille AA Sec 40	L Cpl Baker	7 days C.B	31-3-42	Capt Fuller	
Compton	1-7-42	Pte		AWL 15hrs AA Sec 15(1)	Sjt Ash L Cpl Sharp	7 days C.B For 5 days pay	4-7-42	Lt-Col Gostling	For 1 days pay FR&I 149(1)(a)
Field	2-11-42	Pte		AWL 30 mins, AA Sec 15(1)	L Cpl Greenwood	5 days C.B	3-11-42	Capt Dinnick	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	25-12-42	Pte		AWL 6days 30 mins Expenses incurred 3s/10d	L Cpl Rampton Documentary	10 dys F.P. FR&I 149(1)b)	5-1-43	Maj Johnson	For 7 days pay FR&I 149(1)a)
Field	9-2-43	Pte		AWL 8 days 20hrs 30mins AA Sec 15(1)	Sjt Miller Pte House	10 days pay. 14 days C.B for 18 days pay FR&I 149(2)	19-2-43	Maj Johnson	For 9 days pay FR&I 149(1)a)
Field	8-8-43	Pte		AA Sec 15(1) AWL 2Shrs	L Cpl Nolan Documentary	6 days C.B	14-8-43	Maj J.P. Page	For 1days pay FR&I 149(1)a)
Field	4-10-43	Pte		AA Sec 15(1) AWL 1hr 25 Mins	Cpl Barrett Sjt Skarott	2 days F.P	5-10-43	Maj J.P Page	For 1days pay FR&I 149(2) 2 days pay FR&I 149(1)b)

CERTIFIED TRUE COPY

(G.L.Mitchell) Capt., & Adjt.,
2 Cdn Div Sp Bn (Tor Scot R).

Ex "A"

Substitute For
MFR 296 or
MFR 355

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

No. B76343 Rank Pte Name Rutledge, James Unit Tor Scot R)

Age 29 Married or Single Single No. of Dependents 2

Date of Attestation 29 Nov 43

No. of days spent in close arrest (to date of trial) 17

Dates of promotions, appointment and confirmation of rank, if any —

None

(A certified true copy of MFM 6 must accompany this form)

Dated at 17 Nov 43

O i/c Records (G A Mitchell) Capt
& Adjt.

Unit

(To be dated and signed as for date of trial)

000-64

PTE RUTTER W.

2 CBRG Vol I p 54

FIELD GENERAL COURT-MARTIAL

CF A66 (to be filed at CMHQ IN AB 160) 600-64)
AD/P & R/1868
REVISED 4/38B

Convened by Order of Brig G Francoeur Comd 2 CBRG dated 7 JUN 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (c) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Name(s)	Surname	Unit
D-121422	Pte	William	HUTTER	RCASC 9 CBR Bn

PROCEEDINGS REVIEWED 21 Jun 44
W A Dunn Wgn
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED
DJA, 2 Echelon
Sec G HQ 21 Army Gp
Date

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) ENGLAND on (*date(s)*) 8 JUN 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A65, for oaths and instrs as here to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn b. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1205 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. ~~President to accused: Do you object to as interpreter? Ans~~

~~The Interpreter is sworn.(1) Do you object to as shorthand writer? Ans~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans Nor (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	M G CLENNETT	West NSR, 11 CBR Bn
Member	Capt	R A Gordon	C&C 9 CBR Bn
Member	Lieut	R M Allan	RCA 9 CBR Bn
Judge-Advocate			
Prosecutor	Lieut	M A W Bosley	RCA 9 CBR Bn
Defending Offr	Lieut	W J Archibald	RCASC 9 CBR Bn

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an opportunity when RP 89 (B) and fn 2 were not followed. See Dir p 2.)

A8. The accused D121422 Pte Hutter before arraignment make(s) (no) plea (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is cleared~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 13

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (ii); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(D), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No.(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have not been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 37(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character, or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement, or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement as to Character and Particulars of Service(1), and certified true copy (Abstract) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes (I am relying upon my record of service).(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to swear on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 306, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-121422 Pte William RUTTER, RCASC, 9 CBR Bn

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st cl sec 15(1)	guilty	guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under ~~sentence for~~ ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 4 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

detention for
to undergo a ninety days (90 days) and to be
placed under stoppage & pay in the amount of 7 shillings

8 June 44 (Sgd) [illegible] Lt Col
(Sgd) ..... Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the sentence but remit
thirty (30) days detention

I direct ~~that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

Date 11 Jun 44 (Sgd) [illegible]

Commanding 2 C B C Gp.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D121422 Pte William Rutter.	11 Jun 44	[illegible] Capt ADJT. 9 CBR Bn

C.R. 165 d/8 Jun 44

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CHARGE SHEET

The accused, D-121422, Pte. William BUTTER, RCASC, on strength 9 Bn, 2 Canadian Base Reinforcement Group, a soldier of the Canadian Army Overseas, is charged with

FIRST CHARGE
Sec 15(1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, absented himself from 9 Bn, 2 C.B.R. Group, from 2230 hours, 26 May 44, until apprehended by Canadian Provost Corps, in London, at 0330 hours, 5 Jun 44. Total time absent, 9 days, 5 hours. Cost of apprehension and return to unit, amounting to £0.9.0.

(H.W. Rick), Lt.-Col.
Commanding,
9 Bn, 2 C.B.R.Gp.

In the Field
6 Jun 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(G Francoeur) Brig
Comd
2 Cdn Base Rft Gp

In the Field
7 JUN 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D-121422	Pte		William	RUTTER	RCASC, 9 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 7 JUN 44 endorsed by me, (~~or by one of my predecessors~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior military authy~~.)

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto~~.

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder~~.

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

Major (Rank.)	M G CLENNETT (Must be named. RP 106.)	West N S R,	11 CBR Bn (Unit.)

MEMBERS.

Capt	to be detailed by OC 9 CBR Bn	9 CBR Bn
Lieut (Rank.)	to be detailed by OC 9 CBR Bn (Named or detailed. RP 106.)	9 CBR Bn (Unit.)

WAITING MEMBER.

Capt (Rank.)	to be detailed by OC 9 CBR Bn (Named or detailed, if any. RP 106.)	9 CBR Bn (Unit.)

~~JUDGE ADVOCATE~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ENGLAND (Country.)

(Signed personally. RP 105 fn 2.) Brigadier (Rank.)

(G Franceour)

Date 7 JUN 44

Commanding 2 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA85 (In lieu of AFA3) 40-7-8/1691 (4631)

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Form 557)
(CMHQ GL 173)

I certify that I have this day examined D/121422
(No.)

PTE (Rank) RUTTER. W. (Name) and in my opinion he is

fit ~~unfit~~ to undergo trial by Court-Martial.

Station FIELD

Date. JUNE 8 1944

A Stanner Capt (Cgd)
Medical Officer
(unit) R.C.A.M.C. C.W.R.C.

Page 1
mjc

I would like to point out to the court that Pte Kelly joined the army voluntary in 1939. He served for 3 months and was discharged as under age. He again joined voluntary in 1940 and was discharged as medically unfit due to some heart ailment.

In the last year 1941 he voluntarily joined the C.A.S.C. and proceeded overseas. After his 3 weeks leave he was posted to the M.E.T.D. It is from which I would point out that his epilepsy was first confirmed in 1941. At present he awaits why he was sent to M.E.T.D. He was sent home. Pte Kelly was sent to CASCRU. He finally sent to hospital after 3 months service sick 76th Bridge Coy. Due this period of service he has only had five privilege leaves. He was sent from hospital in 1944 to depot in camp Aldershot. And where he joined 26th Coy from Depot to CASCRU, from CASCRU to 13 CBRBn, from 13 CBRBn to 9 CBRBn. Months of 20 days. He applied for leave at the end of these periods and was duly and promptly. He has also been refused sick leave. He claims that with his mental deficiency how to do some marks.

He is the chief support of his mother. Address of his father is unknown.

his consent age is 21 years and is enacted that with 28 days of ~~the~~ ~~day~~ ~~Hall~~ ~~in~~ ~~other~~ ~~days~~ ~~in~~ ~~a~~ month's evidence is received it is difficult to obtain, but while driving with a bad [illegible] or upon a good [illegible].

Exhibit "B" 78

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 OF 10 APR. 42

I certify that No. D/181422 Rank. Pte. Name. Rutter, W.

Unit. 9 C.B.R.B. was arrested at. London (place)

at 0330 (hour) on 5 June 44 (date) and that at the time of his arrest he was wearing (military uniform) xxxxxxxxxxxxxxxxxxxx

Signature of Provost-Marshal, Assistant Provost-Marshall, or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

R.F. Stinson

London (R.F. Stinson) Capt.
D.A.P.M. C.M.H.Q.

5 June 44

Exhibit "C" 1pp.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. D/21927 Rank Pte. Name Rutter, W. Unit 2 C.B.R.G.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars (Escort)	Amount £	s	d
5 June 44	Escorts return fare from LONDON To Micheldever		4	6
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Micheldever		4	6
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		9	0

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

W. Reid LIEUT.

Officer Issuing Railway Warrant and Expenses
No. 6 Provost Company, Canadian Provost Corps

ADMIN. OFFICER C.P.M's BR.
C.M.H.Q.

C.M.H.Q. 1000/55
40/F & S/483

Exhibit A

SUMMARY OF EVIDENCE

in the case of

D-121422 Pte Rutter W. (R.C.A.S.C.) on strength 9 Bn 2 Canadian Base Reinforcement Group, a soldier of the Canadian Army Overseas who is charged with: -

(1) When on active service, absenting himself without leave. A.A. Sec 15(1)

The Commanding Officer directs the evidence shall be taken on oath.

First Witness for Prosecution — B-22430 L/Cpl Pinchen F.W. on strength 9 Bn 2 C.B.R.G. having been duly sworn states:-

"At 2230 hrs 26 May 44 I called the roll of the R.C.A.S.C. platoon. D-121422 Pte Rutter W. whom I now recognize did not answer his name. I searched the R.C.A.S.C. lines and questioned his tentmates but was unable to locate him. I then placed his name on the Tattoo Report as an absentee. I did not see Pte Rutter again until 5 Jun 44.

F. Pinchen
B-22430 L/Cpl Pinchen F.W.

The accused declines to cross examine this witness.

Second Witness for Prosecution — Documentary Certificate in accordance with P.C.2797 of 10 Apr 42 signed by Capt R.J. Stinson D.A.P.M. C.M.H.Q. and dated at London 5 Jun 44. This evidence has been shown to the accused and marked by me as Exhibit "A" for the prosecution.

(M.A.W. Bosley) Lieut
Officer detailed to take
Summary of Evidence

Third Witness for Prosecution — Documentary, (CMHQ 1000:55) being expense voucher in the amount of £0:9:0 signed by Lieut R.B. Birch Admin Officer D.P.M's Branch C.M.H.Q. This evicence has been shown to the accused and marked by me as Exhibit "B" for the prosecution.

(M.A.W. Bosley) Lieut
Officer detailed to take
Summary of Evidence

The Accused was cautioned as follows:-

Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence.

The accused declines to give evidence on oath or to make a statement.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence, consisting of one page, was taken down by me in the presence of the accused, and that Rules of Procedure 4(c)(d)(e)(f)&(g) have been complied with.

(M.A.W. Bosley) Lieut
Offr detailed to take Summ of Evid.

In the Field
6 Jun 44.

NOMINAL ROLL

Date

To : O.C. ..... Field Unit

From : O.C. ..... Rft. Unit

1. Demand No. .....
2. Date of Demand .....
3. Officers Demanded .....
4. Officers Despatched .....
5. O.R's Demanded .....
6. O.R's Despatched .....
7. Last Meal .....
8. Rations Taken .....
9. Departure Date ..... Time .....
10. How Despatched .....
11. S.O.S. Rft. Unit .....
12. To be T.O.S. Field Unit .....
13. Part I Pay Book Completed to date .....

Regt. No.	Rank	Name	Unit	Trade or Spec. Qual.	Type and Date last leave

DISTRIBUTION

1 copy to Reception Camp
1 " " Field Unit
1 " " 2nd Echelon
1 " " Records Officer

Records Officer | O.C. Reception Camp | O.C. Field Unit

HOLO-9
40/P & S/193 (3347)

NX-121432 Name RUTTER, W. Sqn, Battery, or Company — Corps R.C.A.S.C. — Date of enlistment 29 Jun 42 — GC Badges — Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet N/A — No and date of last drunk N/A — Period not reckoning towards freedom from extra fine N/A — Sheet No One — Signature OC Company, etc — Character Good

MFM 6 (AFB 122) 40/P&S/186 (2438)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	5 May 44	Pte.		A.A.Sec.15(1) AWL from 0630hrs 5 May 44 to 1800hrs 6 May 44. Absent 1 day, 12hrs, 30 min. Extract from M.P.M. 4.		Forfs 14 days pay FRAI,149 (2)			Forfs 2 days pay 149(1)(a)
						(Sgd) J.Hogg, Lieut. (G.L.MULHOLLAND) Capt. Adjt. 9 Rm, 2 J.B.R.Dp.			

(PTO)

Exhibit D — mjc

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D-121422	Pte	William HUTCHER	RCASC (9 Bn, 2 CBNGp)

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AWL AWOL (1) 1 times.

For To Conduct Sheet Overleaf. times.

For Nil taken from Supplementary Nominal Roll times.

For On file 2nd edition times.

Date of first entry in Field Conduct Sheet

Date of last entry in Field Conduct Sheet

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

~~3. The accused at the present time is under sentence for~~

~~beginning on the day of~~

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 4 days in military custody, *i.e.*, Nil days in open arrest, 4 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is ~~24~~ (Born 14 Jun 20)

6. The date of his ~~attestation~~ calling up for military service is 19 Jun 41

7. The service which the accused is allowed to reckon is 5 yrs

8. The accused is in possession of‡

‡State the military decoration (if any) held by accused.

~~9. (If the accused is a warrant officer or N.C.O.). The accused has served continuously, without reduction, to the present date~~

~~Date of Promotion~~

~~in the substantive rank of~~

~~in the war substantive rank of~~

~~in the acting rank of~~

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(51154) Wt.8070/668 100,000 4/42 A.& E.W.Ltd. Gp.698
(55499) Wt.21056/1879 80,000 9/42 " " Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 8 day of June, 1944.

(C.L. Nelson), Capt & Adjt.,
9 Bn, 2 C.A.B.Gp.

WWW-41

Cpl. Ruttle, C.A.

RECORDED AT CMHQ IN AB 160

FIELD GENERAL COURT-MARTIAL

4/388

Convened by Order of ... Comd ... dated ...

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
[illegible]	[illegible]	[illegible]	Clarence Arthur	[illegible]	[illegible]

PROCEEDINGS REVIEWED 20 Sept 44
JC&C (W.R.F. Dowle Capt.
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Pd ~~at Bonnay~~ on (date(s)) 25 Jul 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 0935 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the C.O.(2).~~

~~(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.~~

A5. President to accused: ~~Do you object to ... as interpreter? Ans ...~~

~~The Interpreter is sworn.~~(1) Do you object to Sgt Kendiffer, BW as shorthand writer? Ans No, Sir
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	AA Hugman	3 Armd Recce Regt (Coy)
Member	Capt	W P Patterson	5 Div Sigs
Member	Capt	J W Dowle	RCA att CR(A)SC 5 CAD
Judge-Advocate			
Prosecutor	Lt	C B Macdonell	5 Pro Coy
Defending Offr	Lt	J J Black	2 Armd Regt (LdSH)

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 33.)

A8. The accused ... before arraignment make(s) (no) ~~X~~ plea(s) (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(is closed and)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 2

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after the change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(1. RP 37(B). 2. RP 37(D) fn 2. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex.....initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds ¹ complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No.....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes ~~an~~ (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed ~~on the former, but the accused is (are) found Not Guilty on the latter charge(s)~~.(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans. Yes. Do you intend to call witnesses on your behalf?
Ans. Yes. Are they witnesses as to character only? Ans. No.
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 66(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.~~(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(2) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. ~~The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.~~

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans.....
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement[s] as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be [illegible] in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex.....and Ex.....respectively.(3)
(1. MFB 353 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans.....(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(4). RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Oversees AO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C 37203 Cpl Clarence Arthur KUTTLE, 5 Inf Coy.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Not Guilty	NOTED
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... ~~beginning on (date)~~ ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

~~He is in confinement awaiting present trial a total of ..... days, of which ..... days were spent in hospital.~~ (1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

~~Sentence Awarded by this Court~~:

(Sgd) ..... Judge-Advocate, if any. 25 July 44 Date awarded. (Sgd) A.G.H. Chapman Maj President. (RP 45,250.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) .....

Date .....

Commanding .....

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CHARGE SHEET

The accused, C-37203 CPL RUTTLE, CLARENCE ARTHUR, 5 Company, Cdn. Provost Corps, a soldier of the Canadian Army Overseas, is charged with:

First Charge Sec 40 AA — WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE.

in that he

In the Field on 21 July 44 neglected to obey an order given by a military policeman in the execution of his duty in that when advised by L/Cpl Findlay, B. that he could not proceed up a certain road never the less did so.

In the Field
23 July 44

J. Scott Capt.
(A.J. Scott)
Commanding
5 Company, Cdn. Provost Corps

To be tried by Field General Court Martial,

In the Field,
24 Jul 44

CMSC 5 CDN PROVO CO

FIELD GENERAL COURT-MARTIAL

CFA 30 (In lieu of AFA 33)
and FA 8/1697 (1958)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
037003	Cpl	Clarence Arthur	RUTTLE	B Coy, Cdn Pro Corps.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 23 Jul 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have~~ attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	A A Thomas	2 Cdn Armd Recce Regt (CLH)

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt or Lt	To be detailed by	CHQ 5 Cdn Armd Div
Capt or Lt	To be detailed by	Sigs 5 Cdn Armd Div

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lt	To be detailed by	HQ Regt (CLH) 5 Cdn Armd Div

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy
(Country.)

J. T. Sparling.
(Signed personally. RP 105 fn 2.)

Lt-Col
(Rank.)

Date 24 Jul 44

(J T Sparling)
Commanding ROCCS 5 Cdn Armd Div
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this morning examined No. C-37203

Cpl Ruttle, C.A of S Company, Cdn. Provost Corps and in my opinion he is fit/~~unfit~~ to undergo trial by court martial.

Station Field

Date 25 July 44

O Monkhouse Capt RCAMC
Medical Officer

First Witness: 42384 Sgt Farm, J.R. - 3 Pro Coy. duly sworn states:

"recognize accd. Cpl Ruttle - recall 21 Jul 44 - on duty after dinner - on a scheme with 10 Fd Sqn Engrs "Bingo" - about 1500 hrs" O" Gp consisting of CRE, Maj. Smith, Lt Whittington, 3 other Offrs of 10 Fd Sqn & I. As a result placed Firstpost Junction Nº rd Roccamanara - Castro no vehs to enter rd - only 3 allowed - belonged to Engrs - at approx 1800 hrs or shortly after was about mile up rd with sweeping party & about ½ mile down rd saw jeep with 3 persons thought was CRE's jeep - shortly after Findlay came up & we had found mines - as result of conversation gathered he wanted to go up rd & others following. Instr him not to go & tell friends not allowed up there.

XX-am:- Instr Findlay that Engrs scheme on - rd blown in places & no one to go up - he knew it was impassable - Hatherly came up & I said "How did you get in here" - did not object when told him could not pass - do not know who laid charge - Findlay reported to me & I reported to my offr - Findlay told he had no right to allow veh in there - accd not in same sec as Findlay.

Re-Exam - Nil.

R-P 83(B) complied with.

2nd Witness: C74436 L/Cpl Findlay, B - 5 Bro Coy. duly Bros sworn states:

"know accd. Cpl Ruttle (Points) - recall 21st Jul 44 - on duty that day at Roccaramana Latina - found Nº rd that junction on 7 Road leading to Latina - 3 kms of loc of village - was detailed as foot-man & had telephone there - also had instrs no one went up road - saw accd that day - was driving jeep with L/Cpls Hunter, Hatherly & another. Told him to stop at corner - places out left hand - told him could not go up road - Hunter asked if kidding & I said "No" - I stopped

off road + acco passed up road - saw them come out - reported to Sgt Farm.
XXam: knew scheme on road. A crater in the road - did not know it had been mined - no trouble stopping Jeep - was smiling - always do + said no one allowed up road - moved away just normally - did not say anything about road being mined - they knew road was blocked - told them only one - no action taken against me for allowing this.
Re-Exam
Court: ~~Just as Smith~~ crater - do not know about mines - was about 5.30 in afternoon - orders given by Sgt Farm - was told only 3 engr vehs could go up road - was a crater in road:
R.P. 83(B), complied with.

3rd Witness. L 18183 L/Cpl Hunter, P.C. - 5 Pro Coy, duly sworn states:
" know acco. Cpl Ruttle (Points) - recall 21 Jul - was with acco on that date - about 1 pm we went out for extra messing - came to side rd + saw Findlay there - came over to Jeep - explained where we were going - from attitude figured he was ~~joking~~ joking - went up road - saw engr + told not to go further + to check with Sgt Farm - spoke to Sgt Farm + then came down again." Witness, Hackerly, Ruttle + D in Jeep.
Cross Exam: had been going out with Jeep to get messing - no joy ride impression Findlay that he was joking - knew Findlay - my impression is that he often labours with us - thought he was fooling on that occasion - said nothing except "You'll see" when we pulled out - stopped when we came back + then spoke to Findlay - something about acco being Cpl + Findlay only L/Cpl -
Re-Exam - Words "You'll see" interpreted as though Findlay throwing parting jab at us.
R.P. 83(B) complied with.

4th Bde. F5006 Lt/Cpl Hatherly, JR - 5th Coy - duly sworn states:

"Am cpl now. - know accd, Cpl Ruttle, (Pte 46) recall 24 Jul 44 - saw accd & went out with him - accd & 2 others, Whidden & Hunter & I went out in jeep - proceeded towards Latina - came to rd junc - turned to left - was pte there named Lt/Cpl Findlay - accd stopped & spoke to Findlay & Findlay said not to go up road - Findlay at side of jeep - we proceeded up road until stopped by soldier - went up & spoke to Sgt Farr & then returned way we had come.

XXam - Findlay did not make definite sign not to go up rd - just remember him saying so - did not see signs - do not recall Findlay paying any scheme on."

Re-Exam - Nil.

RP 83(B) complied with.

Def Offr - submits no prima facie case - no order given -

Pros Offr - submits prima facie case established.

Court closed to consider submission.

Court re-opens. Submission is disallowed.

Defence

The accd.

"Was detailed by Sgt to buy extra messing. took a jeep & accompanied by Whidden, Hunter & Hatherly. Whidden knew where to go so followed his directions - met Findlay at rd junc - was instructed to turn left & then saw F come from side of rd - stopped & just made remark "you can't go up there" - Hunter continued - Findlay mentioned nothing about scheme - not in same see - not aware of scheme there - Findlay could have been there for traffic control or traffic check - knew Findlay since coming to Coy - they prominent with Pte jading - hardly know whether serious - thought was jading this time - would not have gone

if realized definite order spoke to Findlay
told him I thought you were fiddling
later - told him I thought you were fiddling
joined Army 8 Apr 41 - joined present Coy in
Sept 41 - came overseas with them became
cpl approx seven months prior to leaving Eng-
land over on charge before - no option to elect
trial - ~~accept~~ did not suggest or try to convince
me I should revert but said he could possibly
accept reversion - others not placed on charge.
Adam - told could not go up rd - had knowledge
scheme in D's area normally not aware
paratroops not usually there - my second trip
down there - may have been there on point
duty - did not know why he was there - knew
should obey order given by MP - some cases
same thing said does not mean anything -
was told could not go up rd. Knew traffic
checks in area - saw sign up road "Sharp
curves, keep right" - no sign that this was
traffic check point.

Re Green - way order given gave impression
not meant.

R.P. 93(3) complied with.

Defence do not desire to call any other witness.

Defence closed.

Pros Offr - points out & submit that Findlay on
duty spoke to accd & told him could not proceed
up road - accd disregarded order given by MP -
Consequently submit charge proven.

Def Offr - submit that wrong man on charge -
think paratroop should be charged - proved
duty to stop anyone going up this road - charge
& particulars are contradictory - advice not an
order - evidence shown not an order but
advice - accd out on business trip - witnesses
in veh got impression Findlay was joking -
borne out by Hunter & accd but Findlay a
joker in fact & in this case was joking - made
no effort to call them back - when definitely
ascertained road impassable came back -
submit that accd should be found guilty of
should have been handled by OC.

SUMMARY OF EVIDENCE

taken by Lieut. C.B. Macdonell, 5 Company, Cdn. Provost Corps, on the 23rd day of July 1944, In the Field, by order of the Officer Commanding 5 Company, Cdn. Provost Corps, who directed that the evidence be taken on oath, in the case of C-37203 CPL. HUTTLE, C.A., 5 Company, Cdn. Provost Corps.

Summary of Evidence in the case of C-37203 CPL RUTTLE, C.A., 5 Company, Cdn. Provost Corps, Canadian Army Overseas, charged with: WOAS: Neglecting to obey an order given by a Military Policeman in the execution of his office, in that when advised, by C-4436 L/Cpl Findlay, B., that he could not proceed up a certain road never the less did so, on 21 July 44, contrary to the provisions of Sec 40 AA.

The Commanding Officer directs that the evidence be taken on oath.

First Witness

L-2384, Sgt. Farn, F.R., 5 Company, Cdn. Provost Corps, sworn, states:

On the 21 July 44 there was an Ops. Gp. held consisting of the C.R.E., 5 Cdn. Armd. Div., Major Smith, C.O., 10 Fd. Sqn., R.C.E., Lieut. Whittington, 5 Company, Cdn. Provost Corps and three other R.C.E. officers. I was present. As a result of this meeting I placed a pointsman, L/Cpl Findlay, 5 Company, Cdn. Provost Corps, on the Junction of Roccaronana Latina Rd. with instructions to let no vehicles enter that road except the CRE's personal jeep and one Scout Car belonging to the CRE as the road had been mined and blasted away in different places. This was at approximately 1700 hrs 21 July 44.

At approximately 1800 hrs same date I was with the Engineer's mine sweeping party about one mile along this road beside a very steep mountain. We had halted as mines had been found and was sitting under the cliff when L/Cpl Hatherly came up to me and spoke to me. I gathered from what he said that he wanted to proceed and that there were others following him. I instructed L/Cpl Hatherly to return as he could not proceed, and any others with him to leave the road as it was dangerous.

At approximately 1830 hrs that date I returned to L/Cpl Findlay and asked why that party had entered the road. I had seen a jeep with what looked like three persons in it on the road but it was too far away for me to distinguish who the occupants were.

The accused declines to cross examine this witness.

Signed - F.R. Farn, Sgt.
L-2384

Second Witness

C-4436 L/Cpl Findlay, B., 5 Company, Cdn. Provost Corps, sworn, states:

On Friday 21 Jul 44 I was detailed by Sgt Farn, 5 Company, Cdn. Provost Corps, for point duty at the T Rd Roccaronana Latina. My duty was to let no vehicles except three to go up that road, belonging to the R.C.E. About 1730 hrs that date Cpl Ruttle, the accused, appeared at my point with three other persons in the vehicle. He was driving a jeep. I stopped him and told him he could not proceedup the Latina Road. He stopped the jeep at my signal and remained here for a few minutes. L/Cpl Hunter, one of the passengers in the jeep, spoke to me. He asked me if I was kidding about proceeding up the road and I replied, "No". The three passengers in the jeep were members of 5 Company, Cdn. Provost Corps. Just after I replied, "No", Cpl Ruttle started up the jeep and went up the Latina road where I had told him he could not go. There was no one else present at my point at that time.

Cpl Ruttle and the same three passengers came back past my point about half and hour later, and I waved them through.

Sgt Farn visited my point about 1830 hrs that date and I reported the incident to him.

L/Cpl Hatherly was one of the three passengers with the accused but I don't remember the name of the third.

The accused declines to cross examine this witness.

B. Findlay, L/Cpl
Signed - C-4436

Third Witness

L-18183, L/Cpl Hunter, P.E., 5 Company, Cdn. Provost Corps, sworn, states:

On the 21 July 44 Cpl Ruttle, the accused, L/Cpl Whidden, L/Cpl Hatherly and myself went out to purchase eggs. It was roughly about 1900 hrs. We went by jeep. Cpl Ruttle was driving. We have a mess fund in our section and we are in the habit of going out and buying extra messing. We usually go to a certain place by a certain road. At the entrance to this road we met L/Cpl Findlay. He was standing at the side of the road. When we saw him we stopped. He didn't signal to us in any way that I noticed. We just stopped to speak to him. He said, "You cant go up there". I knew what he meant by "there" as we had partly turned into the side road. I believe it is the road to Latina. I thought that he was joking from his attitude. To my knowledge no one in the jeep asked him if he was joking. I didn't ask it. I did not know that he was on duty. I thought that he was. He had his arm band on. We more or less joked with him for a few minutes about it, then we proceeded up the road. That is, up the road that L/Cpl Findlay had told us that we could not go. We proceeded up there until we were stopped by an officer of the Engineer's. He told us that we could go no further as there was firing further up the road. He also told us that one of the Provost Sgts was just around the corner. L/Cpl Hatherly went to see when the road would be open. He returned shortly and said that he saw Sgt Parn and that Sgt Parn had told him that the road would not be open that night. I can't remember anything else that he said that the Sgt had told him. We then turned around and went back down the road.

The accused declines to cross examine this witness.

Signed - P.E. Hunter, L/Cpl
L-18183

Fourth Witness

P-50064 L/Cpl Hatherly, J.R., 5 Company, Cdn. Provost Corps, sworn, states:

I was with Cpl Ruttle, the accused, in the jeep that he was driving on the 21 July 44. L/Cpls Whidden and Hunter of our section were also in the jeep. We drove up to the road where L/Cpl Findlay was on duty. I had never been up here before. I think that this was somewhere around 1900 hrs. We were going along the main road and came to a side road. This was where L/Cpl Findlay was. We stopped beside L/Cpl Findlay. I don't know why we stopped. L/Cpl Findlay was standing at the side of the road. He stepped up to the jeep. I couldn't say whether it was before or after it stopped. L/Cpl Findlay spoke to Cpl Ruttle. I didn't hear exactly what he said. I can't recall his exact words. He said something about not being allowed to go up the side road. I understood from what L/Cpl Findlay said that we were not allowed to go up that road. He just laughed, stepped to one side and we went up the road that he told us that we could not go up. We went up this road a piece and a soldier held up his hand for us to stop. We stopped. I didn't notice what unit or formation this soldier belonged to. All I know is that he was a soldier. He told us we couldn't go up any further and that a Provost Sgt was up the road a bit further. Cpl Ruttle asked me to go up and see the Sgt. I did. It was Sgt Parn. I spoke to Sgt Parn and then went back to the jeep. I told Cpl Ruttle that we would have to go back down and that Sgt Parn had told me this. I got in the jeep then and we went back.

The accused declines to cross examine this witness.

Signed - J.R. Hatherly, L/Cpl
P-50064

Fifth Witness

P-78665, L/Cpl Whidden, R.K., No. 5 Company, Cdn. Provost Corps, sworn, states:

I was in the jeep with Cpl Ruttle and L/Cpls Hatherly and Hunter on the 21 July 44. Cpl Ruttle was driving. We came to a side road where we started to turn off. L/Cpl Findlay was on duty there. Just as we turned into the side road we stopped. I dont't know why we stopped. L/Cpl Findlay spoke to Cpl Ruttle. I don't know what he said because I didn't hear. I wasn't paying any attention. Then we started up and drove up the side road a ways and were stopped by the Engineer's. He told us that a Provost Sgt was up ahead. That is all he said that I know of. He said something about that we couldn't get through. L/Cpl Hatherly got out of the jeep to go up and see the Provost Sgt. He then returned to the jeep and told us that it was impossible to go on up through. So we turned around and went back down the same way we had come up.

When the Engineer stopped us he first said something about that we couldn't get through. Then he told us that the Provost Sgt was up ahead.

L/Cpl Hatherly wasn't detailed or asked tolleave the jeep and go up and see the Provost Sgt that I know of.

The accused declines to cross examine this witness.

Signed - R. Whidden, L/Cpl
P-78665

The accused was warned as follows:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence.

The accused: I have nothing to say at this time.

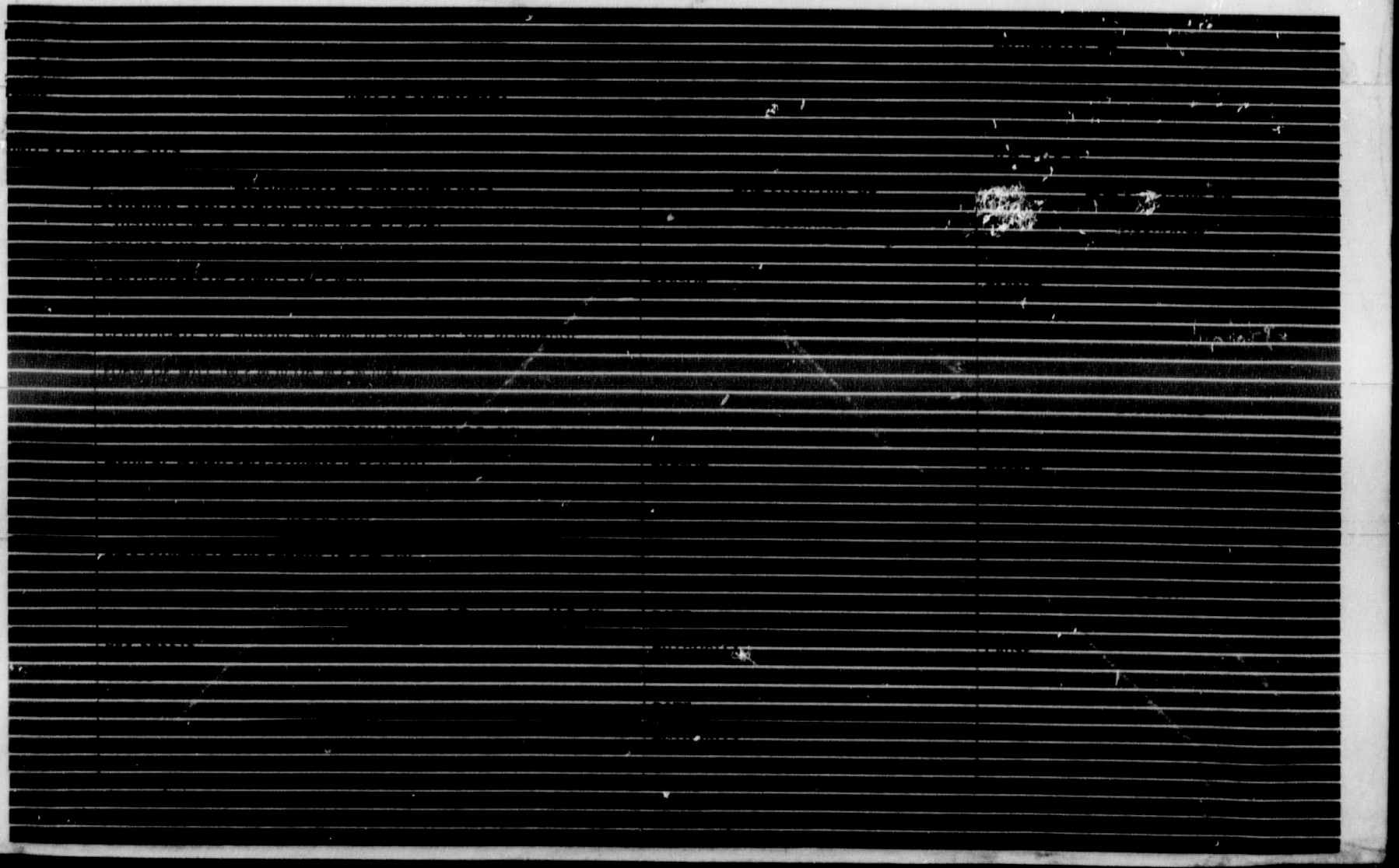
Signed - C-37203 Cpl C.A. Ruttle

I certify that R.P. 4 has been complied with.

Taken by me in the field in the presence and hearing of the accused this 23rd day of July 1944.

(C.S. Macdonell) Lieut.

5 X-100 - RUZYCKI, A.F.



MINUTE OF PROMULGATION

B-142617 Pte RUZYCKI A F
29 Cdn Recreational Increment

Date of Trial: 18 Dec 45

Place: Holland

Charges:

First Charge: AA Sec 40 WOAS, Conduct to the Prejudice of Good Order and Military Discipline, in that he,

In the Field, Holland, on 25 Sep 45 did improperly without authority use WD Vehicle No. CM 4275575 for his own private purposes.

Second Charge: AA Sec 19 WOAS, DRUNKENNESS, in that he,

In the Field, Holland, on 25 Sep 45, was drunk.

Pleas:

First Charge: Not Guilty

Second Charge: Guilty

Findings:

First Charge: Guilty

Second Charge: Guilty

Sentence: To undergo detention for a period of 90(ninety) days.

Confirmation: NOT CONFIRMED. by (C G Wood) Col, ADMS, C.F.N.

Date of Confirmation: 20 Dec 45
Days in Custody: 4 Hosp Nil.

Promulgated and extracts taken.

Accused. Date. 22 Dec 45 Signature of Offr.

D. D. Lond Maj

RECORDED AT CMHQ IN AB 156[illegible] 5X-100

CP/A96 (To issue) AFA/21
40-P & B/1000 14/5/01

FIELD GENERAL COURT-MARTIAL

4/388

Convened by Order of Brig J.G. SPRAGGE Comd 1 Tpt Pln dated 17 Dec 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-142617 Pte		Adam FRANK	RUZYCKI	29 Recreational Increment

PROCEEDINGS REVIEWED

Signature [illegible] Date

REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) HOLLAND on (*date(s)*) 18 Dec 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p. 4. Citations do NOT include all relevant fins RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp. 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AF5, for writs and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 16, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: Do you object to N/A as interpreter? Ans N/A

The Interpreter is sworn.(1) Do you object to N/A as shorthand writer? Ans N/A

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	H.G. PEACOCK	12 Bn Cdn Inf Bde
Member	CAPT	R.M. SINCLAIR	12 Bn Cdn Inf Bde
Member	LIEUT	L.S. REES	1 Cdn Bd Const Regt
Judge-Advocate	—	—	—
Prosecutor	CAPT	J.W. SOUTHWICK	29 Recreational Increment
Defending Offr	LIEUT	J.B. MARTIN	29 Recreational Increment.

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused B-142617 Pte RUZYCKI, A.F. before arraignment make(s) (no) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF AF6 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 'C'

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. N/a No.(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on N/a charge(s). The accused is (are) so informed, and he (they) changes his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex 'A', initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No.(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the N/a charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the N/a charge(s), and allowed on the N/a charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para. if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D6.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans Neither. Do you intend to call witnesses on your behalf ? Ans No. Are they witnesses as to character only ? Ans N/a
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(a).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the N/a charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(2) (5), RP 45, 120(A).* 2. *AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *AFB 255 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes (statement handed in)(2)
(1. *RP 27(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 27(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(2), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A). KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused awaits sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Convening Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D/142617 AB RUZYCKI, A.F., 29 Recruit Reinforcement

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 40	Not Guilty	Guilty	
2nd AA Sec 19	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 752, and in lieu of it see RP 44 fn 6.)

At present under sentence for No days beginning on (date) Nil (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 4 days, of which No days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of 90 (ninety) days.

(Sgd) Nil 18 Dec 45 (Sgd) A.G. Leach Maj
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 27, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Not Confirmed.

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) C Burns Col.

Date 20 Dec 45 Commanding ADMS, C.F.N.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

HQ 29 Recreational Increment

18 Dec 45

This is to certify that I have examined B 142617 Pte Ruzycki, A.P. this date and he is fit ~~unfit~~ to undergo trial by FGCM.

D K Collins Capt
Medical Officer

The accused B-142617 Adam Frank RUZYCKI, 29 Recreational Increment, a soldier of the Canadian Army Overseas, while on active service is charged with:-

FIRST CHARGE
Army Act
Section 40

WHILE ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he

in the Field, Holland, on 25 Sep 45 did improperly without authority use WD Vehicle No. CM 4275575 for his own private purposes.

SECOND CHARGE
Army Act
Section 19

WHILE ON ACTIVE SERVICE, DRUNKENNESS,

in that he

in the Field, Holland, on 25 Sep 45, was drunk.

W. W. Leach Major

(W.W. LEACH) MAJOR
Officer Commanding
29 Recreational Increment

A. A. Leach Major 18 Dec 45

1st. Witness. Dec. 18/45

L154011 Pte. Haines F.W. having been duly sworn states, —

On the 25 September 1945 at approximately 2150 hrs. I arrived back from Brussels on duty with a loaded truck. I parked my truck in front of the O.R.'s Mess for a few minutes while I went into the billets to use the toilet. When entering the Mess I noticed some of the boys playing billiards. There was Cpl. Cuttess, Pte. Wellman, Pte. Lassard, Pte. Tellot. As I left the toilet I heard my truck pulling away from the door. I immediately left the Mess and ran after the truck. It was proceeding towards the station without lights. By the time I arrived at the corner, approximately 120 yards I heard the crash of the truck. I arrived at the scene of the accident a few minutes late and there was Cpl. Melville and Cpl. Bush and Pte. Ruzycki at the truck. I tried to find out who was driving the truck but no one seemed to know. Pte. Ruzycki seemed rather drunk and nervous and he also had a small cut on his chin.

Question — by the Prosecuting Officer

How long elapsed between the time you heard the crash and the time you arrived at the scene of the accident.

Answer — a minute or a minute and a half.

Question by Court.

Did you see anyone in the diving cab of the truck

Answer.

No sir.

2nd. Witness.

B133892 Cpl. Hill B. J. having been duly sworn states, -

At approximately 21.00 hrs. on the night of the 25th. September 1945 Pte. Haines and I arrived back from Brussels in a 10 Ton Mack fully loaded. Pte. Haines entered the Mess and proceeded to the toilet. I followed immediately behind him and proceeded to the serving counter to order two late meals. At present in the Mess Pte. Ruzycki who was sitting at a table by himself who appeared drunk in that he was swaying in his chair. Pte. Tullet, Pte Wellman, Pte. Caswell and Cpl. Cuthus were playing billiards. Also present in the Mess was Pte. White. As ~~Pte~~ Pte. Haines came out of the toilet Pte. Caswell asked him, "Is that your Truck" Pte. Haines did not answer but immediately left the Mess and started to chase the vehicle down the street. As I approached the serving counter I saw Pte. Ruzycki leave the Mess as I looked into the mirror in front of me. Approximately ten minutes after Pte. Haines had left the Mess a soldier came in and said that there had been an accident. I proceeded to the scene of the accident which was about two hundred yards from the O/s Mess. I saw Cpls. Melville and Bush and Pte. Ruzycki at the scene of the accident.

Question by Prosecuting Officer

When did you see Pfc. Ruggeri leave?

Answer

It was after I had ordered the meals and before I heard Pfc. Cassivell say "Is that your truck."

Question by defending officer.

How long after the accident did you arrive at the scene.

Answer

approximately 10 minutes.

Question by Defending Officer

How many other people were present outside of the three you have mentioned.

Answer.

About three or four military and ten to fifteen civilians

Question by the Court.

Did Pfc. Haines immobilize his vehicle

Answer

No.

Question by the Court.

When Pfc. Ruggeri left the Mess was he alone.

Answer

Yes.

Question by the Court.

How long was it from the time Pte. Ruzycka left the Mess, till you saw him at the accident.

answer.

Between fifteen and twenty minutes.

3rd Witness

B62854 Cpl. Bush. K.L. having been duly sworn states, —

On the night of 25 September 1945 at approximately 2100 hrs. I was standing in the Unit vehicle park and I noticed a Jeep Jar vehicle pass going in the direction of Sporrstatt In a few seconds I heard a crash I ran in the direction of the sound which was approximately 100 yards. I noticed Pte. Pizycki just behind the damaged vehicle. I passed him to see if there was anyone in the Truck. When I arrived at the Truck there was no one ~~there~~ in the drivers seat.

Question by the Prosecuting Officer.

Did you see anyone else at the scene of the accident when you arrived.

Answer.

No

Question by the Prosecuting Officer.

What time had elapsed between the time you heard the sound and the time you arrived at the scene of the accident.

Answer.

approximately one minute.

Question by the Prosecuting Officer.

When was the Kuzyckis in relation to the Truck.

Answer.

Directly behind the vehicle and about fifteen feet away.

Question by the Defending Officer.

Could you see the vehicle clearly from where you were.

Answer.

No.

Question by the Defending Officer.

~~Did Court~~ Would it be possible for someone to leave the vehicle in the opposite direction without you seeing them.

Answer.

Yes.

Question by the Court.

Did you see Mr. Kuzyckis before the accident.

Answer.

No.

P

1. Lack of time to get to court by other method
2. Test of crack?

P#

1. Drive other city?
2.

4th. Witness.

D140191 A/Pte. Melville J.B. having been duly sworn states, -

On the night of the 25th. September 1945 while at the vehicle park, approximately 21.00 hrs. I suddenly saw a Jeu Jon Mack vehicle approaching the park from the direction of the O.R's Mess. The vehicle turned right and continued down the Sportstraat. There were no lights on the vehicle and I watched it until it went out of sight. A few moments later I heard a crash. I then ran in the direction of the vehicle whereupon I saw it had crased into a wall. As I approached the vehicle I met Pte. Puyvelde. He was coming towards the vehicle park approximately in the centre of the road opposite the rear end of the vehicle. As I by passed him he said something to me which was not clear and I continued on to see if there was anyone in the vehicle. There was no one there. Cpl. Bush and Pte. Haines followed close behind me. I then left the scene to have a guard placed over the vehicle. I returned with the guard posted him and again left the scene going to the Officers Mess where I ordered Cpl. Cuttuss and Fus. Jeillet to the scene to take charge of the load on the vehicle. I then went to the Officers Mess and reported to the A/O.C.

Capt. Southwick. Returned to the scene of the accident with Capt. Southwick.

Question by the Prosecuting officer.

What was the elapsed time between the crash and the time of your arrival at the scene.

Answer.

approximately one half minute.

Question by the Prosecuting officer.

Was anyone else at the scene of the accident when you arrived.

answer.

Not that I could see.

Question by the ~~Prosecuting~~ Defending officer

Could it have been more than one half a minute from the time you heard the crash and the time you arrived at the scene of the accident.

answer.

Yes.

Question by the Court.

What would be the approximate length of time from when you first heard the crash until you saw the vehicle.

Answer.

approximately one half a minute.

Question by the Court.

How was the vehicle situated when you arrived at the scene of the accident.

Answer ~~by the Court~~.

The left front of the vehicle was crashed into an outputting wall on the left of the road.

Question by the Court.

Was the vehicle a left or right hand drive.

Answer.

It was a left hand drive.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B 142617	Pte	RUZYCKI, A.F.	29 Recreational Increment Hq, CPN

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For an offence under AA Sec 40 (gambling) times. (1)

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. The accused at the present time is under sentence for N/A

beginning on the N/A day of N/A

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for N/A days in civil custody; and for N/A days in military custody, *i.e.*, 4 days in open arrest, N/A days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 23 years 8 months

6. The date of his attestation is 9 Feb 43

~~enlistment for military service~~

7. The service which the accused is allowed to reckon is 2 yrs 9 mths

8. The accused is in possession of†

†State the military decorations (if any) held by accused.

9. *(If the accused is a warrant officer or N.C.O.).* The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	.....
In the war substantive rank of	.....
In the acting rank of	.....

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

Wt 55900/1602 20,000 3/44 51-4751. Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 18 day of Dec 45.

Jo. D. Leach Major.

I am B 142617 Pte Ruzycki, A.F. of 29 Recreational Increment.

I volunteered for service with the Canadian Active Army on the 9th Feb 1943. I arrive overseas in May 1944. In November 1944 I arrived in Belgium. I served three months with the Lincoln and Welland Regiment in action. On 28th Jan 1945 I was removed to hospital as I was considered exhausted. I again volunteered for front line duty but the authorities would not allow me to proceed to the front.

During all this time I have had no crimes in the army and at the present date am entitled to one good conduct badge. I Have qualified for the CVSM & Clasp, 1939 - 45 Star and the France - Germany Star

A.F. Ruzycki

(Statement submitted under E.3.)

B-142617 Ruzycki A.F.

No. Name Sqn., Battery, or Company Corps C Inf C Date of enlistment 9 Feb 43 G.C. Badges Service or Proficiency Pay $1.50

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. one | Signature O.C. Company, etc.

M.F.M. 6 (A.F. B.122) 40/F & /8136 (2065)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial with trial	By whom awarded	Remarks
				SHEET DESTROYED 16 FEB 44. DATE OF LAST ENTRY NIL. CASES OF DRUNKENNESS NIL					
Debert N.S.	16 April 44	Pte		Conduct to the Prejudice of Good Order and Military Discipline (Gambling) A.A. Sec 40	CSM Akey C.W. Cpl Cragg E.J.	3 Days C.B.	18 April 44		

CERTIFIED TRUE COPY
J. L. Leah Maj.

(P.T.O.)

SUMMARY OF EVIDENCE

Taken by Capt J.W. Southwick at HQ 29 Recreational Increment, H.Q., C.F.N. in the presence of the accused B-142617 Pte RUZYCKI, A.F.

FIRST WITNESS: L-154011 Pte HAINES, F.W. having been duly sworn states:

I am L 1540 11 Pte Haines, F.W. of 29 Recreational Increment and employed as a driver of WD vehicle No 4275575. On the 25th of September 1945 at 2150 hours I arrived back from Brussels on duty with a full load of beer. I parked my truck in a mobile condition in front of the OR's mess while I went into the mess to use the toilet. Present in the mess when I entered were Ptes Casswell, Wellman, Teillet and Cpl Cuttress playing billiards. There were also several others. As I came out of the toilet several minutes later I heard the truck drive away from the door. I immediately left the mess and ran after the truck which was proceeding ahead of me without lights. The truck rounded the corner in the Spoorstraat and upon my reaching the corner I heard a crash. I arrived at the scene of the accident one minute later to find Cpls Melville, Bush, Pte Ruzycki and a few civilians present. Also presentwas one guard whom I did not know by name. Pte Ruzycki appeared drunk because he was staggering and nervous. I tried to find out who was driving the truck but no one seemed to know. I myself did not see anyone get out of the truck. On examination I found the front of the truck was smashed and the corner of the building damaged. The motor of the truck was stalled and it was in the third gear of the five.

F.W. Haines
.....
L 154011 Pte Haines, FW

The accused declines to cross examine the witness.

SECOND WITNESS: B-133892 Cpl Hill, B.T. having been duly sworn states:

I am B 133892 Cpl Hill, B.T. of 29 Recreational Increment. On the 25th of Sept 1945 at approx 2150 hours Pte Haines and I arrived at the men's mess in WD veh No 4275575 fully loaded with beer. The veh was left unattended in a mobile condition and we proceeded to enter the mess. Pte Haines was the first to enter the mess. I followed immediately and noticed Cpl Cuttress, Ptes Wellman, Casswell and Teillet playing billiards. Pte White was also in the mess and Pte Ruzycki who was sitting alone at a table and who appeared to be drunk in as much as he was weaving about in his chair. Pte Haines entered the lavatory and I proceeded to the serving counter to order two late meals. As I approached the counter I saw in the mirror Pte Ruzycki leaving the mess. Approx one minute later Pte Haines came out of the lavatory and Pte Casswell asked him "Is that your truck?". Pte Haines did not answer but immediately left the mess and started running after the truck. At the time the truck was driven off all those previously named as being in the mess, with the exception of Pte Ruzycki, were still there. Approx ten minutes after Haines left a red-headed soldier came into the mess and reported there had been an accident. I immediately left the messx accompanied by Ptes Wellman, Teillet and Casswell proceeded to the xcene of the accident. On arrival I saw Cpl Bush, Pte Turnbull, Pte Ruzycki and one other soldier. On talking to Pte Ruzycki he appeared drunk as he was staggering and very

...../2

excited. The door of the building at 45 Spoorstraat was damaged.
I did not examine the truck for damage.

The accused decline to cross examine the witness.

.....
B 133892 Cpl Hill, B.T.,

THIRD WITNESS: H 42373 Rfn TEILLET, J. having been duly sworn states:

I am H 42373 Rfn Teillet, J. of 29 Recreational Increment. I was playing billiards in the men's mess on the night of 25th Sept 1945 when at approx 2200 hrs Cpl Hill and Pte Haines entered the mess. With me were Ptes Wellman and Casswell. Later a soldier entered the mess and informed us there had been an accident. Cpl Hill and I immediately left the mess and proceeded to the scene of the accident. At this time I cannot recall who was at the scene of the accident. I remember Cpl Hill questioning those who were there while Cpl Cuttress proceeded to have the beer unloaded from the truck. I did notice the corner of the building and the front of the truck was damaged.

The accused eclines to cross examine the witness.

.....
H 42373 Rfn Teillet, J

FOURTH WITNESS: D 140191 Cpl Melville, J.B. having been duly sworn states:

I am D 140191 Cpl Melville, J.B. of 29 Recreational Increment. On the evening of 25th Sept 45 at approx 2100 hrs I was at the unit veh park entrance when I suddenly saw a 10 ton Mack truck approaching the park. It was dark and the truck had no lights on. I could see the driver but because of the darkness I could not recognize him. The vehicle was travelling about 15 mph and instead of entering the park it wheeled right and continued down the Spoorstraat. It disappeared from view and several seconds later I heard a loud crash. I ran in the direction of the crash and in the centre of the road I met B 142617 Pte Ruzycki, A.F. coming towards me. He was in the centre of the road approx apposite the rear end of the vehicle. This was about one half minute after I heard the crash. I did not see anyone else at the scene of the accident. Pte Ruzycki was staggering. He said something to me which I did not understand as I by passed him to see if there was anyone in the vehicle. There was no one there. B 62854 Cpl Bush, K.I. and L 154011 Pte Haines, F.W. came running up close behind me. I immediately returned to the guard which I called from the building and psted him at the scene of the accident. Then I proceeded to the mess to order Cpl Cuttress Rfn Teillet to the scene of the accident to take charge of the load of beer. I then went to the Officers' Mess and reported the accident to the acting O.C. He then brought me to the scene of the accident.

The accused decline to cross examine the witness.

.....
D 140191 Cpl Melville, JB

FIFTH WITNESS: B 62854 Cpl BUSH, K.L. having been duly sworn states:

I am B 62854 Cpl Bush, K.L. of 29 Recreational Increment. On the night of 25th Sept 45 at approx 2100 hrs Cpl Melville and I were talking at the entrance to the unit vehicle park when we noticed a 10 ton Mack truck rounding the corner to proceed down the Spoorstraat. I thought it looked like one of our trucks but because of the darkness I could not see the driver. About one minute later we heard a crahs and ran in the direction from which it came. Cpl Melville was a few steps in front of me when we arrived at the scene of the accident. Pte Ruzycki was in the centre of the road just behind the damaged vehicle. We ran past him to see if there was anyone in the truck. There was no one there. As we passed Pte Ruzycki he was running back in the direction from which the vehicle had come. I asked him what had happened and he replied something about there having been an accident. Pte Ruzycki was staggering and appeared drunk. At the time I saw no one else at the scene of the accident. This was about one minute after I heard the crash.

The accused declines to cross examine the witness.

K.L. Bush.....
B 62854 Cpl Bush, KL

SIXTH WITNESS: K 1205 Pte Turnbull, E. having been duly sworn states;

I am K 1205 Pte Turnbull, E. of 29 Recreational Increment, employed as a guard. On the night of 25 Sept 45 about 2100 hrs I was on guard in the orderly room. Cpl Melville entered and informed me there had been an accident and that I was to guard the truck. I proceeded to the scene of the accident and there I saw Pte Jones, Cpl Melville and other soldiers whome I did not know. There was also civilians present. I cannot state that I saw Pte Ruzycki there. I guarded the truck until my tour of duty finished at 2300 hours.

The accused declines to cross examine the witness.

E. Turnbull.....
K 1205 Pte Turnbull, E.

SEVENTH WITNESS: B 110759 Cpl Cuttress, C.D. having been duly sworn states:

I am B 110759 Cpl Cuttress, C.D. transport corporal of 29 Recreational Increment. On the night of 25th Sept 45 at approx 2015 hrs I went into the mess. The fellows were playing billiards. Present in the mess when I entered were Ptes Wellman, Casswell, Teillet, Ruzycki and others. At approx 2100 hrs I saw Cpl Hill and Pte Haines enter the mess. Shortly afterwards Haines ran out of the mess. Later Cpl Melville entered and informed me that one of our 10 ton trucks had been in an accident. I went to the scene of the accident with most of the men in the mess. There I saw Ptes Tauson and Teillet and a crowd of civilians. The truck was smashed into the side of the building with its left front wheel and left side damaged. The door and wall of the building was also damaged. I could not find out who was driving. The load was transferred

...../4

and a guard put on the vehicle.

The accused declines to cross examine the witness.

Capt. Cuttress CD
.....
B 110759 Capt Cuttress, CD

After being duly cautioned the accused declines to make a statement.

This certifies that all the requirements of RP 4 (c), (d), (e), (f) and (g) have been complied with.

Hilversum, Holland
12 Nov 45

J.W. Southwick Capt
(J.W. SOUTHWICK) Capt
29 Recreational Increment
H.Q., C.P.N. C.A.O.

NAME Ruzzi, A.

Reg. No. D-170020

Tr. Centre No.

Clearing Depot No.

Contents	H. Q. File No.	Non-Effective By
M. F. M. 103 or 103A (Enrol. Form)		
M. F. M. 101 or 101A (Enrol. Form)		
M. F. M. 82 or 82A (Enrol. Form)		
N. W. .S 1AR or 1AR FR (Med. Exam)		
M. F. B. 227 (Med. Board)		
CASE HISTORY SHEETS		
MORNING SICK REPORT (M. F. B. 292)		
CONDUCT SHEETS		
DECLARATION of C. of I. (Copy of Record from M. B. 68)		
M. F. M. 110 (Particulars of Family)		
M. F. M. 30 or 30A (X-Ray Report)		
M. F. D. 930A (Last Pay Certificate)		
M. F. B. 350 or 350A DISCHARGE CERT. (Copy)		
M. F. M. 7A or 7C DISCHARGE CERT. (Dup.)		
M. F. B. 483 DESERTERS-DESCRIPTIVE RETURN OF		

DOCUMENTS N.R.M.A.

M.F.W. 258SA.
100M-9-42 (5199)
H.Q.1772-39-1377

H.Q. 99/37/RUZZI A/1

K.F.B. 387
500M—8-43 (1512)
H.Q. 1772-39-440

DEPARTMENT OF NATIONAL DEFENCE (ARMY)

CROSS REFERENCE

Possible SIW Case XUK 287

D170020 Gnr Ruzzi A - 6 Cdn A Tk Regt

CENTRAL REGISTRY	DATE	P. A. OR B. F.	INITIALS	REFERRED TO	FOR REMARKS	INITIALS	DATE
		(If purpose for which referred cannot be expressed on one line, add minute to file, and enter here "With Minute")					
10 OCT 1945	10 Oct	BF		AS	Per BF	CR	9 Oct 45
10 NOV 1945	2 Nov	BF		A4	BF	CR	10/11
13 NOV 1945	10 Nov	BF		A1	Papers	CR	13/11
	11 Nov	BF	B	A8	BF	CR	10 Nov 45

H.Q.

DO NOT WRITE BELOW THIS LINE

Canadian Military Headquarters
2 Cockspur Street
London, S.W.1

DATE 4 Jan 46

(Attns AAG Dis)

Norrith AF A3104 in respect of the sentence set forth below for custody:

Sentence	Date	Suspended	Remitted by
1 yr detn	30 Jan 46	30 Jul 46	SOC 5 Can Inf Div CAOF on 1 Jan 46.

2 enclosed. A certified copy of the proceedings is also

(W R Hope) Capt
for Officer i/c
2nd Canadian Headquarters CAOF

A.G.

back forces. Please ensure that correct ... item has ... and documentation of ... deleted.

99/37/ BUZZI A /2 (AG)

2ND ECHELON HEADQUARTERS CAOF

DATE 12 Jan 46

Canadian Military Headquarters
2 Cockspur Street
London, S.W. 1

(Attn: AAG Dis)

B170020 Cpl Buzzi A.
No 3 Cdn R/Tk Regt RCA CAOF

1 Correction of A3104 in respect of the sentence set forth below for custody:

Sentence	Date	Suspended	Remitted by
1 yr detn	30 Jan 45	30 Jul 45	GOC 3 Cdn Inf Div CAOF on 1 Jan 46.

2 A certified copy of the proceedings is also enclosed.

(N H Pope) Capt
for Officer i/c
2nd Echelon Headquarters CAOF

Encl 5

Please ensure that correct casualty return has been rendered and documentation of remission is completed.

99/37/ /1 (AB)

RUZZI A

CDN SEC 2 ECH HQ BRIT ARMY OF THE RHINE

Date 10 Dec 45

HQ
3 Cdn Inf Div (CAOF)

REVIEW OF SUSPENDED SENTENCE

D170020 Gnr Ruzzi A.
2/7 Cdn A/Tk Regt (CAOF)

1 AF A3104 is enclosed herewith for action in accordance with Overseas HC #732, para 4 (b).

2 On completion of Part VI, may the form be returned direct by the reviewing authority to this HQ.

COURIER/

ENCL(1)

(J A V Cade) Major
for Officer i/c
Cdn Sec 2 Sub HQ Brit Army of the Rhine

In liew of AF A3104

D.170020 Gnr Ruzzi A RCA 9 CBR Bn

detn for one year 30 Jan 45

19 yrs 2 Sep 42

VI. No remission BF 30 Apr 45 ELM BURNS MAJ GEN
GO IC CDN SEC 1 ECH
HQ 21 A Gp
21 Mar 45

No remission BF 18 Jul 45 do
2 May 45

Suspend wef 30 Jul 45 do
12 Jul 45

AA Sec 40 - in the field, on 31 Oct 44, while with his regt, so nigligently handled his rifle as to shoot himself thrugh the right foot thereby rendering himself unfit for service. 30 Jan 45

??????

IX.

9 Feb 45 No comments at this time. ????Lt.col

X.

Normal review ELM BURNS MAJ GEN
GO IC CDN SEC 1 ECH
HQ 21 A Gp
17 Feb 45

Sentence suspended wef 30 Jul 45
Marks earned wef 30 Jul 45 - 1454
Days in suspension - 183
Date of release - 30 Jul 45
Capt
No 1 Fd Punishment Camp, C Pro C

remain in suspension BF 1 Jan 46 C Vokes, Maj-Gen GOC 5 CID CACF 30 Oct 45

REMIT REMAINDER OF SENTENCE do
1 JAN 46

220/SUB/RCA/1

HQ 3 Cdn Inf Div (CAOF)
10 Nov 45

Cdn Sec 2 Ech
HQ BAOR

3/1 Files for Release AB

REVIEWS OF SUSPENDED SENTENCE
RCA 3 Cdn Inf Div (CAOF)

1. Herewith AFs A3104 for the following with the endorsement that sentence remain in suspension.

D-170020	Gnr Ruzzi A	2/3 Cdn A Tk Regt RCA (CAOF)
F-13332	Gnr McNeil M	2/12 Cdn Fd Regt RCA (CAOF)
E-47119	Gnr Bedard A	2/13 Cdn Fd Regt RCA (CAOF)

(C Vokes) Maj-Gen
GOC 3 Cdn Inf Div (CAOF)

EHKH/cwts

Encl (3)

RUZZI A

Date 10 Oct 45

HQ
3 Cdn Inf Div (CAOF)

REVIEW OF SUSPENDED SENTENCE

D170020 Gnr Ruzzi A
2/3 Cdn A/Tk Regt (CAOF)

1. AF A3104 is enclosed herewith for action in accordance with Overseas RO 4732, para 4 (b).

2. On completion of Part VI, may the form be returned direct by the reviewing authority to this HQ.

COURIER
Encl. (1)

(J. A. V. Dade) Major
for Officer i/c

30 Jul-45

1-170020, Gnr RUZZI A 2/3 Co. A/7th Regt (C.A.O.F.)

(AG 10a)4/11 Jul-45 30 Jul-45

PFF

No 1 Cdn Detn/ 1009
No 1 Cdn Detn & FP Bks Cdn Pro C

7 July 1945

Cdn Sec GHQ
1 Ech 21 A GP

SENTENCE UNDER REVIEW

B-170020 Pte Buzzi A.

1. Reference 510/1009/1(AG 12)d/3 May 45 relative to sentence under review for the m/n soldier.

2. The u/m inlm is appended

(a) Date sentenced by FGCM	30 Jan 45
(b) Date admitted to detn bks	12 Feb 45
(c) Number of days remission already lost	4 hrs extra drill 20-2-45
(d) Number of marks already earned	1246
(e) Date of release with full remaining remission	26 Sept 45
3. Attentiveness to drill and parade square work	Attentive soldier on parade
Reaction to strict military discipline	Obeys without questions
Appearance and bearing	Clean and tidy soldier
Cleanliness in person and clothing	Smart and soldierly
4. Application to work and ingenuity	A reliable worker on details
5. Military employment upon release from detn	Wishes to return to Canada for discharge

6. (a) This soldier wishes to redeem himself and signifies willingness to serve in OOP until such times as he earns by good conduct the full remission of sentence.

(b) Conduct and deportment are very satisfactory.

(c) It is recommended that sentence be suspended and he be earmarked for OOP Service as it is considered he will give useful service upon release.

Lt Col
(Secretary (AG))
1 Cdn Detn & FP Bks
Cdn Pro Corps

OOP/fs

x 130 22.3.45

PPR

(19)

SECOND REVIEW OF SENTENCE

1. ADC to GO i/c Date 1 May 45

II. No D.170020 Rank Gnr Name RUZZI A
Unit RCA (12) CBR Bn

Date of Enlistment 2 Sep 42

Offence: Was found Guilty:
AA Sec 40: Neglect to the prejudice...so negligently handled his rifle as to shoot himself through the right foot thereby rendering himself unfit for service.

Sentence: To undergo detention for one (1) year,

Wef 30 Jan 45 Date of Last Review 21 Mar 45.

Direction on Last Review:

"No remission - BF 30 Apr 45"

III. Report by: Comd, 1 Cdn Detn & P P Bks:

(a) Desires transfer to RCASC as driver.

(b) Satisfactory

(c) Yes, if transferred to RCASC.

S R
1945 - JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
E
1946 - JAN

IV. Recommendation: A.G. 12: Work-sheet for the first review is flagged at folio 13.

The soldier was doing Guard duty and, according to his own statement, picked up his rifle and slung it over his right shoulder with the sling to the front and his rifle pointing to the ground. The rifle suddenly went off and wounded him in the right foot.

D S Clapperton

(D. S. Clapperton) Capt
A.G. 12
Cdn Sec 1 Ech HQ 21 A Gp

510/Ruzzi A/1 (AG 12)

3 May 45

D170030 Gnr Ruzzi A
10 CHR Bn RCA

your No 1 Cdn Detn/1009 dated 23 Apr 45.

30 Jan 45
2 May 45

"No remission B.F. 15 Jul 45".

No 1 Cdn Detn/ 1009
No 1 Cdn Detn & FP Bks Cdn Pro C

15

23 Apr 45

Cdn Sec GHQ
1 Ech 21 A GP

SENTENCE UNDER REVIEW

D 170020 Pte RUZZI A
6 Cdn A/Tk Regt RCA

1. Reference 510/Ruzzi A/1 (AC11) d/23 Mar 45 relative to sentence under review for the m/n soldier.

2. The u/m infm is appended:

(a) Date sentenced by FGCM - 30 Jan 45
(b) Date admitted to detn bks - 12 Feb 45
(c) Number of days remission already lost - 1 day (already reported)
(d) Number of marks already earned - 656 out of 1920
(e) Date of release with full remaining remission - 27 Sep 45

3. Attentiveness to drill and parade square work - Attentive
Reaction to strict military discipline - Favorable
Appearance and bearing - Smart
Cleanliness in person and clothing - Clean

4. Application to work and ingenuity - A fair worker

5. Military employment upon release from detn -

6. (a) This soldier wishes to transfer to RCASC as a driver i/c. He is presently employed in our electrical trade school on Veh wiring and is interested in this branch of work. He wishes to redeem himself at the first opportunity.

(b) Conduct and deportment has been satisfactory.

(c) It is considered that he will render useful service should he be transferred to RCASC and his sentence suspended.

Lt Col
(Commandant (APM))
No 1 Cdn Detn & FP Bks
Cdn Pro C

CPB/BJ.

K 230 22.3.45

(14)

S10/Ruzzi A/1 (AG 11)

23 Mar 45

DJA (Reviews)
Cdn Sec 1 Fch HQ Fl A Gp

REVIEW OF SENTENCE

D170020 Gnr Ruzzi A
RCA (9 CBRBn)

Ref 99/37/Ruzzi A/1 (DJA) d/9 Mar 45.

2. The sentence awarded by FGCM to the m/n soldier on 30 Jan 45 was reviewed by the GO I/C this Bq on 21 Mar 45 and the following direction was made:

"No remission - BF 30 Apr 45"

3. ~~Herewith proceedings of FGCM for your retention~~ DSC.

R.B. Clapperton Capt
(J. T. Harvey) Major
DAAG 'Dis'
Cdn Sec 1 Fch HQ Fl A Gp

ENCLS, POST/HAND
Encl/

Copy to: Comd, 1 Cdn Detn & FP Bks

(15)

510/ RUZZI A /1 (AG 11)

WORK SHEET

REVIEW OF PROCEEDS AWARDED BY COURT-MARTIAL

I. PA to GO i/c Date 30 Mar 45

II. No D 170020 Rank Gnr Name RUZZI A

Unit RCA 9 CBR Bn Age 22 yrs 1 month

Date of Enlistment 2 Sep 42

Offence: Was found Guilty:
AA Sec 40 - Neglect to the prejudice.....so negligently handled his rifle as to shoot himself through the right foot thereby rendering himself unfit for service.

Sentence: To undergo detention for 1 year.

WEF 30 Jan 45 Last Reviewed First Review.

III. Extenuating Circumstances: Nil

Rec by Court: Nil

Character (previous convictions):
AA Sec 15(1) - One offence - AWL for 3 days 19 hrs 20 mins.

IV. Rec by CO: 9 CBR Bn made no comments. GO i/c Cdn Sec 1 Sch HQ 21 A Gp, Confirming Officer, recommended normal review.

V. Rec by ~~XXXXXXXXXXXXXXXXXXXX~~ Commandant 1 Cdn Detn & F P Bks.
"An attentive and alert soldier on the parade square, reacting favorably to strict military discipline. Soldierly in appearance and bearing, clean in kit and person. This soldier is still in the first stage therefore no comment can be made on his ability and application in work. This soldier is serving a sentence for negligence in fire arms. He states that he was on guard duty and had his rifle slung over his shoulder reversed with muzzle pointing to the ground. He was walking on his beat over rough ground when his rifle discharged and a bullet went through the rear of his right ankle. He states that it was purely accidental. This soldier is a Driver IC and does not wish to return to his former unit, but to be posted to the RCASC as a driver. He seems a good all round man who no doubt ~~XXXXXXXXXXXXXXXXXXXXXXXXXX~~ will become a useful soldier upon his release. It is recommended that consideration be given upon his next review of sentence."

VI. Rec re review by AG.10

During the trial Gnr Ruzzi stated that the rifle which he had slung over his shoulder with the muzzle pointing to the ground accidently discharged when he was returning to his beat as he was on Guard duty. It is noted that the court did not find Gnr Ruzzi guilty of the charge under Sec.18(2) but under Sec.40 on negligence in the handling of his personal weapon. Recommend -

"No remission - BF 30 Apr 45"

PFPR

(J.F. Ferris) Captain,
(AG 11)

1 Cdn Detn/1009

No 1 Cdn Detn & FP Bks
Cdn Pro C
16 Mar 45

Cdn Sec GHQ
1 Ech 21 A Gp

Sentence under review
D 170030 Gnr RUZZI A
6 Cdn A/T Tk Regt

1. Reference 510/Ruzzi A/1 (A~~G~~7) d/11 Mar 45 relative to the m/n soldier.

2. The u/m infm is appended:
(a) Date sentenced by FGCM - 30 Jan 45
(b) Date admitted to detn bks - 12 Feb 45
(c) Number of days remission already lost - 1 day
(d) Number of marks already earned - 328 out of 2160
(e) Date of release with full remaining remission - 27 Sep 45

3. An attentive and alert soldier on the parade square, reacting favorably to strict military discipline. Soldierly in appearance and bearing, clean in kit and person. This soldier is still in the first stage therefore no comment can be made on his ability and application in work.

4. This soldier is servinga sentence for negligence in fire arms. He states thathe was on guard duty and had his rifle slung over his shoulder reversed with muzzle pointing to the ground. He was walking on his beat over rough ground when his rifle discharged and a bullet went through the rear of his right ankle. He states that it was purely accidental.

5. This soldier is a driver i/c and does not wish to return to his former unit, but to be posted to the RCASC as a driver. He seems a good all round man who no doubt will become a useful soldier upon his release.

6. It is recommended that consideration be given upon his next review of sentence.

Lt Col
Commandant (APM)
No 1 Cdn Detn & FP Bks
Cdn Pro C.
DRLS

COM/ BJ.

Cond
1 Cdn Detn & P W Bks

CDN SEC GHQ 1 ECH - 21 A GP

510/Kuzai A/1 (AG.7)

11 Mar 45

Subject: Sentence under Review
Name: Kuzai, A.

1. The m/n soldier was sentenced by FGCM on 30 Jan 45 to undergo detn for one year.

2. AF A3104 has been received for review of sentence from "Holding Authority" Cdn Sec GHQ 1 Ech - 21 A Gp.

3. Accordingly, it is requested that a report be forwarded to this HQ on the soldier's conduct and behaviour since date of commitment to assist in review of sentence.

(M.O. Moran) Lt Col
AAG
Cdn Sec GHQ 1 Ech - 21 A Gp

DRLS/POST

510/Muzzi A/1 (AG.7)

CDN SEC GHQ 1 ECH - 21 A GP

Cond
1 Cdn Detn & 7 P Bks

11 Mar 45

Detention Under Review
~~Detention Muzzi, A.~~

1. The m/n soldier was sentenced by FGCM on 30 Jun 45 to undergo detn for one year.

2. AF AZ104 has been received for review of sentence from "Holding Authority" Cdn Sec GHQ 2 Ech - 21 A Gp.

3. Accordingly, it is requested that a report be forwarded to this HQ on the soldier's conduct and behaviour since date of commitment to assist in review of sentence.

(M.O. Moran) Lt Col
AAG
Cdn Sec GHQ 1 Ech - 21 A Gp

DRLS/~~POST~~

99/37/RUSZI A/1 (DJA)

Cdn Sec 2 Ech, HQ 21 Army Gp

9 Mar 45

GOIC
Cdn Sec 1 Ech
HQ 21 Army Gp

(Attn A G 5)

REVIEW OF SENTENCE

D-170020 Gnr Ruszi A
6 Cdn A/Tk Regt RCA, 10 CNR Bn

1 Herewith att AFA 3104 together with certified true copy of the s/m proceedings.

2 On completion of Part VI of AFA 3104 may the same be returned to this HQ.

3 It is understood that this soldier's present disposition is 6 Cdn A/Tk Regt RCA, 10 CNR Bn.

(W R Waugh) Major
DJA
Cdn Sec 2 Ech
HQ 21 Army Gp

Encl
COURIER

TIME 1500

C.R.
10 MAR 1945
CDN SEC GHQ 1 ECH
21 ARMY GROUP

(9)

M E M O R A N D U M

B10/Ruggi A/1 (AG 8)

7 Feb 45

To: D J A

I

FOCM - Suspected SIW
D.I70020 Gnr Ruggi A
6 Cdn A/Tk Regt RCA

1. Ref folio 8, as it appears that disc action has now been completed, please advise finding and sentence of court.

(T. Ferris) Captain
AG 8
Cdn Sec 1 Ech HQ 21 A Gp

II

Remarks - D J A Tried on 29-30 Jan guilty) Neg under AA 40 only - detention for 1 yr Confirmed 2 Feb 45

(E.W. Howard) Major
D J A
Cdn Sec 1 Ech HQ 21 A Gp

1/SIW/1 (RUZZI)

Standing Court Martial Board,
c/o ADJA HQ 2 CBRC,
31 Jan 45.

AAG,
Cdn Sec GHQ 1 Ech,
21 A Gp.

FGCM - 30 Jan 45
D.170020 Gnr Ruzzi, A., 6 Cdn A Tk R[illegible] RCA

1 Reference your message VA [illegible]

2 The witnesses in this case [illegible] on 25 Jan 45 for the m/n trial and were returned to their unit this morning.

/blc

(R.F. Willson) Major.

MESSAGE FORM 510/Rugg1 A/1 (AG 8)

ABOVE THIS LINE FOR SIGNALS USE ONLY

FROM CANFOR (EXFOR REAR) 300840 A

TO 9 CMR HN (ATTN MAJOR RF WILLSON)

A 868 (.) RESTRICTED (.)
Our tpm A 747 d/22 Jan (.) Advise if witnesses fm case of D 170020 GNR RUGGI A arrived as instructed (.)

AS WRITTEN IN CIPHER

SIGNED Capt

IMPORTANT

THIS FOR

MESSAGE FORM

ARMY FORM C2156 (Small)

Register No.

Call | Srl. No. | Priority

Transmission Instructions

510/Rugg1, A/1

ABOVE THIS LINE FOR SIGNALS USE ONLY

FROM (A) Originator: C4BFOR (EXFOR REAR)

Date-Time of Origin: 221630A

For Action

TO (W) For Information (INFO): ADM HQ FIRST CDN ARMY

Message Instructions

XXXXX 12 CBR Bn - 9 CBR Bn (Attn: Maj R F Wilson)

A 747 RESTRICTED . FGCM on D170020 Gnr RUGGI, A 6 Cdn A Tk Regt RCA suspected of SIW ready to proceed . B143215 Gnr MATTHEWS, W E and P4524 Sgt GARGAN, L E both same unit required as witnesses . despatch earliest to 12 CBR Bn upon arrival personnel will report to Maj R F Wilson Le Petit Palais Justice GHENT . advise forthwith if personnel not available

This Message may be sent as written by any means except [illegible] unless

If liable to be intercepted or to fall into enemy hands this message must be sent in cipher

Originator's Instructions Degree of Priority: Emergency

Time | Signature | Op.

THI or TOR

Time cleared

SIGNED Capt

SIGNED

1/SIW/1 (RUZ I)

Perm Court Martial,
c/o ADJA HQ 2 CBRG,
20 Jan 45.

DJAG,
Cdn Sec GHQ 1 Ech,
21 A Gp.

Application for FGCM
D.170020 Gnr RUZZI, A., 6 Cdn A tk Regt RCA

1 Herewith m/n application for FGCM.

2 Evidence of B.143215 Gnr Matthews, W.E., 6 Cdn A Tk Regt RCA, does not appear in the Summary but I have served notice to Capt Hungerford under R.P. 76. D.4524 Sgt Gargan, L.E., 6 Cdn A Tk Regt RCA will also be required as a witness. May we be informed if these witnesses are available, please.

R. Willison

/blc

(R.F. Willison) Major.

Copy to AG B

520/SIW/1 (DJA)

15 Jan 45

Major R.F. Willson,
c/o ADJA
HQ 2 CBRG

D-170020 Gnr Ruzzi, A.
6 Cdn A Tk Regt RCA

1. Reference your 1/Recom/1 (Ruzzi) dated 12 Jan 45.

2. It has been decided that proceedings will be taken in this case.

3. The documents enclosed in your letter a/m are returned herewith.

(B.W. Howard) Major
DJA
Cdn Sec 1 Kch HQ 21 A Gp.

Encl
DRLS

B/F for action

3

6SG/SIW/1 (AG 5)

MESSAGE FORM

FROM: CANAIR (EXPOR (BAR)

Date & Time of Origin: 091720 A

TO: FOR ACTION

OC 6 CDN A/TK REGT
OC 4OCH OF C
OC 1 CDN FD PK COY RCE
OC ALC R
OC RNSH
OC 1 C SCOT R
OC 35 A TPS CDNF COY RCASC

[illegible] HQ A
321103
P/s advise present disposition of this case.
[illegible] Capt
SC "A"
Cdn Sec GHQ 1 ECH - 21 A Gp

FOR INFORMATION

ADJ HQ FIRST CDN ARMY
REAR HQ 2 CDN CORPS
HQ A TPS ARMY FIRST CDN ARMY
OC 6 CDN GEN HOSP (ATTN LT. COL JNG THOMPSON)
VIC CDN SEC GHQ 2 ECH - 21 A GP (VIA COURIER)

[illegible] Not quite ready for trial. give 2 wks. B Montgomery DJA.

A 04 (.) RESTRICTED (.)

W/m personnel have recently been transferred from 111 (Brit) Gen Hosp to 8 Cdn Gen Hosp for further investigation re possibility of SIW (.)

B 170080	GNR	RUGGI A	6 CDN A/TK REGT
H 204520	PTE	CURTIS R	4OCH OF C
A 116564	SPR	MACHYNISKI S	1 CDN FD PK COY RCE
B 11784	PTE	CROSS J	ALC R
F 82567	PTE	SIMPSON RA	RNSH
B 74070	PTE	HEWITT HD	ALC R
B 146843	PTE	JACKSON HL	1 C SCOT R
K 48628	PTE	RODFORD GH	35 A TPS CDNF COY RCASC (.)

Expedite despatch all relevant information and evidence earliest direct to 8 Cdn Gen Hosp attn LT. COL JNG THOMPSON (.)

[illegible] Lt Col
[illegible] Adjt

	TF CIPHER	ORIGINATORS TIMING DIRECTION OF PRIORITY
Signed [illegible] Capt		IMPORTANT

DISTRIBUTION:

510/Ruggi A/1
510/Curtis R/1
510/Machyniski S/1
510/Cross J/1
510/Simpson RA/1
510/Hewitt HD/1
510/Jackson HL/1
510/Rodford GH/1

PSA

From: AG 5 Date 16 JUN

Subject: Suspected STW
O 170020 Cpl Ruggi A.

Herewith ltr correspondence which is self-explanatory - Have you any info on this soldier - if not I will write to secure further data.

Capt.
A.
Con Sec GHQ 1 Echn - 21 A Gp

- Reply -

To: AG 5

No data comes fwd.

520/SIW/1 (AG 8)

MESSAGE FORM

FROM: CANFOR (LIAISON TOAR)	Date - Time of Origin 061045 A

FOR ACTION

TO:

111 (BRIT) GEN HOSP
6 CDN GEN HOSP

FOR INFORMATION

DADMS & L OF J SUB AREA
6 CDN GEN HOSP (ATTN: MAJ GEN THOMPSON)
OIC CDN SIG GP 2 ECH - 21 A GP (VIA COURIER)

ORIGINATORS NO

A SG (.) RESTRICTED (.)
Following personnel now patients at 111 (Brit) Gen Hosp to be transferred to 6 Cdn Gen Hosp for further investigation re possibility of SIW (.)

D.170020	GNR	RUGGI A	6 Cdn A/Tk Regt
H.204520	PTE	CURTIS R	QOCH of C
A.116564	SPR	BACHYNISKI S	1 Cdn Mt Pk Coy RCE
B.11704	PTE	CROSS J	Alq R
F.82647	PTE	SIMPSON RA	RHSH
D.16026	CPL	DOE GL	5 Bn RCR
B.74070	PTE	HEWITT HD	Alq H
B.146643	PTE	JACKSON HE	1 C Scot R
K.88623	PTE	RODFORD G (.)	

Understand DADMS & L of C Sub Area providing required tpt for personnel (.).

Signed: Capt	IN CIPHER	ORIGINATORS INSTRUC DeGRee OF PRIORITY IMPORTANT

DISTRIBUTION:

510/Ruggi A/1
510/Curtis R/1
510/Bachyniski S/1
510/Cross J/1
510/Simpson RA/1
510/Doe GL/1
510/Hewitt HD/1
510/Jackson HE/1
510/Rodford G/1

GSW - Right foot - moderate
admitted from 158 Brit Gen
Hosp 23 Nov
not listed as SIW.

99/37

H.Q. ~~810~~/Rugg1, A/1

M.F.S. 187

DEPARTMENT OF NATIONAL DEFENCE—(ARMY)

CROSS REFERENCE

Possible SIW Case

D170020 Gnr ~~Rugg~~, A - 6 Cdn A Tk Regt

RUZZI

H.Q.

Central Registry	Date	P. A. or B. F.	Initials	Referred to	For Remarks (If purpose for which referral cannot be expressed on one line, add minute to file, and enter here "With Minute")	Initials	Date
	12 Dec	BF 2	H	AG 5	WITH PAPERS	C.R.	DEC 1944
DEC 9 1944				AD/A	with minute	H	6 Dec 44
DEC 10 1944	20 Dec	BF 3	H	AG 5	" "	Blad	9 Dec 44
DEC 20 1944	2 Jan 45	BF	H	AG 5	PER B. F.	C. R.	DEC 20 1944
				AG 8	PER B. F.	C. R.	JAN 2 - 1945
				AD/A	With minute	H	2 Jan 45
JAN 5 1945	17 Jan	BF	H	AG 8	With minute	Blad	4 Jan 45
JAN 16 1945	29 Jan	BF	H	AG 8	WITH PAPERS	C.R.	JAN 16 1945
JAN 17 1945	17 Jan	PA	H	AG 8	PER B. F.	C. R.	JAN 17 1945
JAN 22 1945	23 Jan	PA	H	AG 8	WITH PAPERS	C.R.	JAN 22 1945
JAN 30 1945				AG 8	PER B. F.	C. R.	JAN 29 1945
FEB 1 1945	1 Feb	PA	H	AG 8	WITH PAPERS	C.R.	FEB - 1 1945
FEB 8 - 1945				AG 8	PER B. F.	C. R.	FEB 7 1945
FEB 8 1945				ADA	With minute pls	H	7 Feb 45
FEB 9 1945	9 Feb	PA	H	AG 8	do.	Blad	8 Feb 45
MAR 11 1945				AG 7	WITH PAPERS	C.R	MAR 10 1945
				AG 12	WITH PAPERS	C.R.	MAR 19 1945
				ADC	Sig 60 ½ pls	H	20-3-45
MAR 23 1945	21 Apr	B.F.		AG 12			21 Mar
MAY - 2 1945				AG 12	PER B. F.	C. R.	APR 27 1945
MAY - 2 1945				ADC	Signature 60 ½	ADC	1 May
MAY 4 1945	2 Jul	BF		AG 12	—	Blad	2 May
JUL 10 1945				AG 12	B.F.	C.R.	10-7
				ADC	60 ½ signature pls -	AG 12	10 Jul.
JUL 14 1945	10 C			AG 10	—	auth	12 Jul
JUL 16 1945	15 Jul	PA		Eyles	sgd	Eyles	16/7
AUG 1 1945	9 Aug	BF		AG 11	passed	Ed	1 Aug.

DO NOT WRITE BELOW THIS LINE

4W-44.

Gm Ruzzi.a

RECORDED AT CMHQ IN AB 160.

FIELD GENERAL COURT-MARTIAL

CP498 (To be used as AF A281)
40-47-50 M 1/1698 (6/45)

4/388

RECEIVED
5 MAR 1945
JAG BRANCH
C.M.H.Q.

Convened by Order of Major E.K. McCormack Comd 2 Can Sec 6 HQ dated 22 Feb 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, frs, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
[illegible]		Albert	Ruzzo	[illegible]

PROCEEDINGS REVIEWED

[illegible]
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held at (place) in (country) Belgium on (date(s)) 29 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member~~, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A25, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53; RP 56, 62-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1545 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~

~~The Interpreter is sworn.(1)~~ Do you object to ..... as shorthand writer? Ans .....

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G.H. MacDougall	R.R.C.	9 CIB HQ
Member	Capt	J.A. Baillargeon	Gen List	A/H Can Sec 6 HQ
Member	Capt.	E.B. Van Dine	R.C.A.S.C.	A/H Can Sec 6 HQ
Judge-Advocate				
Prosecutor	Major	R.F. Willson	L.&W.R.	A/H Can Sec 6 HQ
Defending Offr	Capt	W.G.D. Mungeford	R.C.A.S.C.	A/H Can Sec 6 HQ

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) (a) plea ..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62, when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form .....

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*ii*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3, para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans Accused as witness. Do you intend to call witnesses on your behalf ?
Ans Yes. Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s) being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No. Yes. Accused gives evidence.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex C respectively.(3)
(*1. MFD 255 or MFB 216. 2. MAM 6. 3. RP 46, KR Can 559. If above documents not produced, see RP 46 fn 1 para (.).*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans As I.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and 101 branches, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 98, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : ...

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	not guilty	not guilty	
2nd Alternative	not guilty	guilty	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753; dna in lieu of kd see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 12 days, of which nil days were spent in hospital.(2)
(2. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

to undergo detention for one (1) year.

30 Jan 45 (Sgd) J. Rhando Capt
(Sgd) ..... Date awarded. President. (RP 45, 50.)
Judge-Advocate, if any.
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirm Edwd

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)
(1. AA 57A. Delete if not used.)

(Sgd) E.W. Rowe Maj Gen

Date ..... Commanding ..... Confirming Officer.

DJAG Cdn Sec. GHQ 21 Army

I certify that there are no illegalities or irregularities in the finding, sentence and confirmation of these proceedings.

Lt-Col
Judge Advocate

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D-170020 Gnr KUZZI A RCA, 9 CBR Bn	FEB 08 1945	CAPT. & ADJT., 9 BN. 2 C.B.N. G.P.

CR 8 Sheet 1
8 Feb 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CHARGE SHEET

The accused, D.170020 Gnr Albert RUZZI, 6 Canadian Anti-Tank Regiment, Royal Canadian Artillery, on strength 12 Battalion 2 Canadian Base Reinforcement Group, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Army Act
Sec 18(2)

WHEN ON ACTIVE SERVICE WILFULLY INJURING HIMSELF WITH INTENT THEREBY TO RENDER HIMSELF UNFIT FOR SERVICE

in that he

In the Field, on 31 Oct 44, while with his regiment, by discharging his rifle wilfully injured himself by shooting himself through the right foot with intent thereby to render himself unfit for service.

SECOND CHARGE
(Alternative)
Army Act
Sec 40

WHEN ON ACTIVE SERVICE NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field, on 31 Oct 44, while with his regiment, so negligently handled his rifle as to shoot himself through the right foot thereby rendering himself unfit for service.

In the Field,
17 Jan 45.

(A.O. Hood) Lt-Col
OC 12 Bn. 2 C.B.R.D.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field,
22 Jan 45.

(E.L.M. Burns) Maj-Gen
GOIC
Cdn Sec GHQ 1 Echn, 21 A Gp.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap Y paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see PP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D170020	Gnr		Albert	RUZZI	(6 Cdn A tk Regt RCA) 12 Bn 2 CBRG

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 22 Jan 45 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~) ;

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto~~.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder~~.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	E.P. [illegible] G.L. Macdougall	Gen List-Cdn Sec GHQ 1 Ech-21 A Gp

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	F.A. BAILLARGEON	Gen List-att Cdn Sec GHQ 1 Ech-21 A Gp.
Capt	E.B. VAN DINE	RCASC-att Cdn Sec GHQ 1 Ech-21 A Gp

~~WAITING MEMBER.~~

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE-ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

(Signed personally. RP 105 fn 2.) Maj-Gen (Rank.)

(E.L.M. Burns)

Date 22 Jan 45

Commanding Cdn Sec GHQ 1 Ech, 21 A Gp.

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAOS (1st Issue of AFAS) 40 P & S/1697 (4/43)

(See overleaf for oaths and notes for use on trial.)

Approved
DJA

MEDICAL CERTIFICATE

I certify that I have this morning examined Private Gnr
RUZZI, A. and find him FIT to undergo trial by
Court Martial.

Date 29 JAN 45

D.P. Mitchell. Maj.
Medical Officer.

MEDICAL CERTIFICATE

I certify that I have this morning examined D 170020
Pte. Ruzzi A and find him fit to undergo trial by
Court Martial.

Date 30 Jan 1945.

J. B. Rundall Capt RCAMC
Medical Officer.

11 D170020 Gnr Ruzzi Albert 6 Cdn Fd
attd. 12 Bn 2 CIBRG.

D-2 No opening address

1 3.

Evidence for the prosecution

Major J. P. Middlebro. RCAMC ad
2 Can Gen Hosp. being duly sworn is
examined by the prosecutor.

I recognize the accused whom
I examined to-day. I found a through
and through wound of his right foot
one wound one inch below lateral
malelous and other about centre of
sole 3 inches in front of back of
the heel. Both wounds are healed. He
still walks with a limp but I
expect there will be little or no
disability after two months. The
wound could have been caused
by weapon held in his own hands.

Cross-examination

I expect he will be able to go back
to his unit but not before two months
from now. He will have to go "back"
to a Con Dep

RP 93(8) complied with

Second Witness for the Prosecution

D 70451 Cpl Shaw W.C. SIS C Pro C
having been duly sworn states.

I recognize the accused. On 17 Jan 45
I saw the accused at 2 Can Gen Hosp. I identified
myself and read a statement to him. He read it
and identified it as his own. He said he had

(P.T.O.)

been cautioned. He adopted it as his own.

The Defending Offr has no objections.

Statement read to the court and marked Exhibit "A".

RP 83(B) complied with.

Wind Written for the Prosecution

P. 4524 Sgt Gargan L.E. 94 Coy A-Tk Bty RCA having been duly sworn states:

I recognize the accused. On 31 Oct 44 at about 2145 hrs I was informed that one of our chaps was shot. I proceeded to the guard post. The accused had been moved to a nearby bldg. I went to the bldg. The accused informed me that on going to the latrine he had lain down his rifle and when he picked it up by the sling he slung it over his shoulder, barrel toward the ground. the ~~x~~ slinging over his shoulder had caused the action to go off. No one saw the shooting. I made a check in the area but no one had seen the accident. He was on duty on a guard on a ammn. dump. They were ordered to load the rifles but there were to be no rds in the chamber. The safety catch was to be on. The mags were to be changed.

No cross-examination.

By the court.

I found the rifle after the accident. There were about 6 rds. in the mag. It was then in the house where he was being treated. There was an expended cartridge in the ch
There was

The bolt was closed. We ~~checked the~~ GPW & ~~so far as I know~~ ~~number and~~ it was the accused's own rifle.

RP 83(B) complied with.

Fourth Witness for the Prosecution

Defending Offr has been served noticed re this witness under RP 76.

No 7483215 Gnr Matthews. W.E. 74 Coy A/Tk Bty RA having been duly sworn states:

I know the accused. On 31 Oct 44 about 2130 hrs. I was ~~posted~~ ~~3 GW~~ on guard at Portacher Dump, 2 Cdn Corps. L/Bdr Cooper was posted with me. Gnr Ruggi relieved me at 2100 hrs. I was taken down to the extreme end of the beat. There I was reported by Sgt. Francis and told to stay there until relief came. At 2130 hrs. I was walking up my beat when I heard a shot. I ran in the direction and there found Gnr. Ruggi lying on the rd. I went up to him and turned him over. He groaned. I asked him where he was shot. He said it was his foot. I cut off his boot and removed his stocking. We carried him to a house, with a civilian. A Belgian had went to get an N.C.O. On the way to the Guards Hq he got a civilian doctor. The civilian doctor dressed the wound. Sgt Gargan came after the wound was

accused. I did not talk to Cpl Ruzzo. I did not see the accident. I gave the empty cartridge to Sgt Bourgeois out of the rifle. It was pretty dark. It was hard ground. There was a path there.

No cross-examination.

By the court:

The rifle was lying along side the accused when I found him. I couldn't tell how he had been carrying it. I think the muzzle was toward his feet. He was on his seat when I found him. He was conscious when I found him. I am not a particular friend of his. I just knew him to see him.

RP 83(B) complied with.

Pte L — The accused, D 110020 Cpl. Ruzzo A. 6 Cdn A/Tk Regt RCA having been duly sworn states.

It was not a good rifle. The body bolts were loose.

Accused demonstrates. He loaded the rifle slung it over his shoulder, muzzle downward sling to the front. He says then it went off when he started to walk. It was slippery. It could have been my steps on the web belt or anything that made it go off. I had no bayonet. The trigger must have come into contact with something. There was nothing bothering my mind at the time. I've been over since

July 4, 1944. I'd been with the Regt & all the time. I was driving a truck for a time for the battery. I did a lot of guard duty. Our Regt had 17 pdrs. I was on gun crew but we never fired. We were in a defensive pos. This was about my 2nd rifle. I had fired my rifle in practice. We had never been in action with the enemy. I'd like to go back to the Regt when I'm fit. I can't remember saying anything after I was hit. I came to in a house.

Cross-examination:

~~I didn't see my own rifle afterwards.~~ I was the only one around when the accident happened. It was my rifle. I was never told ~~not to have a rd in the chamber~~ how to carry the rifle. We were told to keep the rifle loaded. I had a round in the barrel. I'm pretty sure I put the safety catch on. If I had a round in the chamber I should have had the safety catch on. The enemy was over 10 miles away I think. I had nothing to do with pulling the trigger. My hand was not near the trigger. It must have caught on some of my equipment. I'd seen some shelling but never been close to the enemy. I had no reason to want to avoid service. I know a lot of people in my own battery

By the Court

It was an old rifle. I don't remember if the safety catch was loose or stiff. I'd had

it about a month. I cleaned it once a day. The safety catch was not very stiff. I carry the rifle muzzle down often. It was damp and there was rain. I loaded the rifle every night I went on guard.

R.P 83(13) complied with.

Closing Address:

The accused has given his explanation. You have observed the demonstration. I ask you to dismiss the 1st charge.

Reply by the Prosecution:

There is not much evidence to convict under 15(1). But there is evidence as to negligence. There is more to this case than has been demonstrated here. It does take quite a tug to discharge a weapon under normal circumstances. Credibility of the witness will play a big part in the decision. I leave it to the court.

C-3 Plea in Mitigation:

Born 8 Dec 1922. Single and from Montreal P.Q. before enlistment he was a truck driver. Assigns $20.00 per month to his mother. Has been under close arrest since 17 Jan 45.

8 Cdn. Gen. Hosp.
7 Dec 44.

Reg No: D-170020, Pte. RUZZI, Albert, of
74 Battery, 6 A/T. Regt., R.C.A., 2 Cdn Corps.

States: I have been cautioned by S/Sgt. Chester, S.I.S. 6 Cdn. Provost Corps, that I am not obliged to say anything unless I wish to do so, but that whatever I do say will be taken down in writing and may be given in evidence. I understand the meaning of this warning

SIGNATURE A. Ruzzi

I am 22 years of age. I enlisted for Active Service at Petawawa, Ont. in August 42 in the R.C.A. and came to the U.K. in Aug 43 with my present unit. I have had some training in England as a gunner, but until about the end of September of this year I have been a driver in the unit, using a 15 cwt. for the Battery. In Sept I became an active gunner following a four day absence from the unit in September.

On 31 Oct 44, having been detailed to guard ammunition and explosives, I was taken by Sgt GARGAN to my post for the period of guard from 2100 to 0100 hrs. I was the only guard on that spot. Soon after Sgt. Gargan left me I went into a nearby ledge to perform a necessity of nature. I had a touch of dysentry at the time and for 2 weeks previous. A.R When finished dressing, I also wore my greatcoat, - I started back to my post, first stopping to load my rifle. I had no baynet. The rifle was cocked but I cannot be sure whether the safety was on or not. I slung the rifle on my right shoulder, the strap in front and the rifle pointing at the ground behind me. The ground was rough over which I walked back to my post and it was dark.

A. Ruzzi.

A. Ruppe

I don't know how it happened but suddenly the weapon fired. I felt a hot pain in my right foot and I fell down. My head hit the ground and I remembered nothing more until I came to in the house of some civilians near the ammo dump. A civilian doctor was dressing my wound. I don't know how long this was after the shot. A boy who lived in the house went and brought Sgt Gargan and a L/Bdr. from the billets about 2 kms away. They came in a 'Quad' and took me to 2CCS. where the wound was operated on and after two days I was moved to 9(Br) Gen. Hosp., later to 108 (Br) Hosp, then to 111(Br) Hosp. Yesterday I was transferred to No 8 Cdn. Gen. Hosp.

My wound which was in the fleshy part of the right side of my right foot has almost healed completely. I feel that I am ready for duty again.

I don't know what became of my rifle. I don't know the name of the people in whose house I found myself, but it was one of two houses on the outskirts of Oostacker, on a dirt road leading onto the main road between Oostacker and Ghent. That is where the ammo dump was.

I gave a statement regarding my wound to Sgt. Gargan, and another at No 9(Br) Hosp and at No 111(Br) Hosp.

My wound was caused accidentally and I do not consider that I was negligent. It was necessary for me to carry a cocked and loaded rifle ready for action. I have read this statement and it is true. SIGNATURA. B. Ruppe.

Statement reduced to writing by Lt. Workster S/Sgt. Witness Pte Collard, A

S.I.S., CANADIAN PROVOST CORPS — 8 Cdn Gen Hosp
Incre 'C' Cdn Sec GHQ 1 Ech, 21 A Gp. — 7 Dec 44.

S T A T E M E N T

Reg. No. D.170020, Gnr. RUZZI, Albert, of 74 Battery, 6 A/T Regt, R.C.A., 2 Cdn Corps, (attached 8 Cdn Gen Hosp.)

STATES:

I have been cautioned by S/Sgt Chester, S.I.S., Cdn. Provost Corps, that I am not obliged to say anything unless I wish to do so but that whatever I do say will be taken down in writing and may be given in evidence. I understand the meaning of this caution.

(Sgd) A Ruzzi

I am 22 years of age. I enlisted for Active Service at Patawawa, Ont., in August 42 in the R.C.A. and came to U.K. in Aug 43 with my present unit. I have had some training in England as a gunner, but until about the end of September of this year I have been a driver in the unit, using a 15 cwt for the Battery. In September I became an active gunner following a four day absence from the unit in September.

On 31 Oct 44, having been detailed to guard ammunition and explosives, I was taken by Sgt GARGAN to my post for the period of guard from 21.00 to 01.00 hrs. I was the only guard on that spot. Soon after Sgt Gargan left me I went into a nearby hedge to perform a necessity of nature. I had a touch of dysentry at the time, and for two weeks previous. When finished dressing - I also wore my great-coat - I started back to my post, first stopping to load my rifle. I had no bayonet. The rifle was cocked but I cannot be sure whether the safety was on or not. I slung the rifle on my right shoulder, the strap in front and the rifle pointing to the ground behind me. The ground was rough over which I walked back to my post and it was dark.

I don't know how it happened, but suddenly the weapon fired. I felt a hot pain in my right foot and I fell down. My head hit the ground and I remembered nothing more until I came to in the house of some civilians near the ammo dump. A civilian doctor was dressing my wound. I don't know how long this was after the shot. A boy who lived in the house went and brought Sgt Gargan and a L/Bdr from the billets about 2 km away. They came in a 'Quad' and took me to 2 C.C.S. where the wound was operated on and after two days I wascmoved to 9(Br) Gen Hosp, later to 108 (Br) Hosp, then to 111(Br) Hosp. Yesterday I was transferred to No. 8 Cdn Gen Hosp.

My wound, which was in the fleshy part of the right side of my right foot,has almost healed completely. I feel that I am ready for duty again.

I don't know what became of my rifle. I don't know the name of the people in whose house I found myself, but it was one of two houses on the outskirts of Oostaker, on a dirt road leading into the main road between Oostaker and Ghent. That is where the ammo dump was.

I gave a statement regarding my wound to Sgt Gargan, and another at No.9 (Br) Hosp and at No.111 (Br) Hosp.

My wound was caused accidently and I do not consider that I was negligent. It was necessary for me to carry a cocked and loaded rifle ready for action. I have read this statement and it is true.

(Sgd) A. Ruzzi

Statement reduced to writing by (Sgd) H.W. Chester, S/Sgt
Witnessed by Pte. Collard, A.N.

M.F.B. 355
50M—9-42 (3997)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D-170020	Gunner	Ruzzi, A	6 Cdn A Tk Regt RCA

1. The following is a fair and true summary of the entries in the [illegible] Battery Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.A. 15 (1)	1 times	0	times
For		times		times
For		times		times
For		times		times

[illegible]

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

X

[illegible]

3. The accused is not under sentence at the present time.

X

[illegible]

4. The accused has been in confinement awaiting trial on the present charges, for [illegible] days in military custody, making a total of [illegible] days in custody, of which [illegible] days were spent in hospital.

5. The present age of the accused according to his [illegible] attestation paper is 8 Dec 22

6. The date of his [illegible] attestation specified in his [illegible] attestation paper is 2 Sep 42

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon [illegible] service for the purpose of determining his pension, etc.

9. The accused is in possession of [illegible] The Canadian Volunteer Service Medal and Clasp.

10. [illegible]

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of
Permanent Force
unit
dated , and in his regiment (or corps), the rank of
dated

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number D-170020 Rank Gunner

Name Ruzzi, A of 6 Cdn A Tk Regt RCA Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
	NIL			

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 11th day of December 1944

Capt
6 Cdn A Tk Regt RCA

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

D-170020 No. Name Ruzzi, A. Sqn., Battery, or Company } Corps RCA Date of enlistment } 2 Sep 42 G.C. } Tradesmen's Rates of Pay } C

M.F.M. 6
A.F.B. 122
8000M—11-41 (2408)
H.Q. 1772-39-1552

No. and date of last drunk } Period not reckoning towards freedom from extra fine } Sheet No. Signature O.C. Company, etc. } Badges } Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	17 Aug 44	Gnr		AWL from 1800 hrs 17 Aug 44 to 1320 hrs 21 Aug 44 (Close arrest from 1320 hrs 21 Aug) Sec 15 (1) A.A.) (3 days 19 hrs 20 min)	Documentary BSM Adams	7 days Pay 7 days F.P.	26 Aug 44	Sgd LA Devine Lt Col (L.A. Devine)	Aut forf of 4 days pay FR&I 149(1)A) 5 days pay FR&I 149 1 C) 11

CERTIFIED TRUE COPY W.A. Hand Capt
18 DEC 44 ADJUTANT 6 Can Atk Regt RCA

(P.T.O.)

This is Exhibit 'A' referred to in the Summary of Evidence in the case of D.170020 Gnr RUZZI, A., taken this 17th day of January 1945.

Officer taking Summary.

Statement of Sgt. Gargan L.E. P-2524

"On 31st Oct. 44 I was a Gun Sgt. in the 74th Cdn. A. Tank Bty R.C.A. attached to the Guard detail at the Oostacker Ammn. Dump, 2 Cdn. Corps. About 2145 hrs on that date a Civilian had come to our Unit post and informed me that one of our men had been Shot. The O/Sgt. and the Offrs were away on duty. I obtained a vehicle and immediately proceeded to the dwelling adjacent to #6 Guard Post from where Gnr. Ruzzi had been removed. I asked Gnr. Ruzzi what had happened, and he told me that he had laid his rifle down to go to the latrine, and when finished, he had seized his rifle by the sling, and slung it over his right shoulder, muzzle down. This action had caused the weapon to go off as a result, he had been wounded in the right foot. At the time of my arrival a Civilian doctor had dressed Gnr. Ruzzi's wound, and I removed him to No 2 C.C.S. I made extensive inquiries but could find no one who had actually seen the shooting.

Upon arriving at 2 C.C.S. Gnr. Ruzzi volunteered a statement to me which I took down in writing. In reference to this statement Gnr. Ruzzi said. "That's exactly how it happened, Sarg."

The a/m original document was handed to Lieut Mc Gilton by me on my return to the unit.

In reference to my instructions covering the loading of weapons by the guards. I was present when Lieut Mc Gilton instructed that the magazines were to be charged, but no rounds were to be placed in the chamber, and the safety was to be applied."

R.O. Gargan

11 - 12 - 44

This is Exhibit 'B' referred to in the Summary of Evidence in the case of D.170020 Gnr Ruzzi, A., taken this 17th day of January 1945.

Officer taking Summary.

STATEMENT OF P.4524 Sgt GARGAN, L.E.

On 31 Oct 44 I was a Gun Sgt in the 74th Cdn A tk Bty RCA attached to the Guard detail at the Oostacher Amm Dump, 2 Cdn Corps. About 2145 hrs on that date a civilian lad came to our unit post and informed me that one of our men had been shot. The O/Sgt and the Officer i/c were away on duty. I obtained a vehicle and immediately proceeded to the dwelling adjacent to #6 Guard Post from where Gnr Ruzzi had been removed. I asked Gnr Ruzzi what had happened and he told me that he had laid his rifle down to go to the latrine and when finished he had sezied his rifle by the sling and slung it over his right shoulder, muzzle down. This action had caused the weapon to go off and as a result he had been wounded in the right foot. At the time of my arrival a civilian doctor had dressed Gnr Ruzzi's wound and I removed him to No.2 C.C.S. I made extensive enquiries but could find no one who had actually seen the shooting.

Upon arriving at 2 C.C.S. Gnr Ruzzi volunteered a statement to me which I took down in writing. In reference to this statement Gnr Ruzzi said, "That's [redacted] exactly how it happened, Sarg."

The a/m original document was handed to Lt McGilton by me on my return to the unit.

In reference to my regulations covering the loading of weapons by the guards I was present when Lt McGilton instructed that the magazines were to be charged but no rounds were to be placed in the chamber and the safety was to be applied. (sgd) "L.E. Gargan" 11-12-44

I, D.170020 Gnr RUZZI, A., desire to have an officer assigned to represent me at my trial by Field General Court Martial.

I desire the services of Capt W.G.D. Hungerford ~~if he is available~~.

Date 17 Jan 45

A. Ruzzi
(Signature of Accused)

SUMMARY OF EVIDENCE

Summary of Evidence in the case of D.170020 Gnr RUZZI, A., 6 Cdn A Tk Regt RCA, on strength 12 Fd Bn 2 CBRG, charged with, when on active service wilfully injuring himself with intent thereby to render himself unfit for service (AA Sec 18(2)), alternative, when on active service neglect to the prejudice of good order and military discipline (AA Sec 40).

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS Major J.P. Middleboro, RCAMC, att 2 Cdn Gen Hospital, sworn, states:

On examination I find evidence of a through and through wound of the right foot. One wound is situated on the lateral side of the foot one inch in front of the external maleolus, the other wound is on the sole just in front of the heel in about the mid-line of the foot. The axis of the wound is about forty-five degrees to the axis of the foot. Both wounds are healed. Examination of the ex-rays shows the os calcis to have been traversed but no serious damage done. The foot is still tender but he is walking up to two miles. I expect there will be no disability after one to three months' further convalescence. The wound could have been caused by a weapon held in his own hands.

The accused declines to cross-examine this witness.

J.P. Middleboro
Witness.

SECOND WITNESS A.71451 Cpl SHAW, W.C., Cdn Provost Corps, att 'C' Inc Cdn Sec GHQ 1 Ech, 21 A Gp, sworn, states:

On 17 Jan 45 at 2 Cdn Gen Hospital I interviewed the accused. I identified myself and produced a written voluntary statement. I read over the statement to the accused and asked him to identify it. He said it was his signatures and chimed it to be a true statement and admitted it being his own statement. I asked him if he had been cautioned at the time and he replied that he had. I read the statement over to the accused and he read it over himself. He admitted the statement was in the same condition as when he first signed it. This is the statement. (Statement attached hereto as Exhibit 'A').

The accused declines to cross-examine this witness.

W.C. Shaw
Witness.

THIRD WITNESS P.4524 Sgt Gargan, L.E., 6 Cdn A Tk Regt RCA

I certify that in my opinion the attendance of this witness is, owing to the exigencies of the service, not readily procurable and a written statement of his evidence, signed by him, has been read to the accused and is attached hereto as Exhibit 'B'.

Officer taking Summary.

I do not require the attendance of P.4524 Sgt Gargan, L.E., for the purpose of cross-examination.

Accused.

The accused is cautioned as follows:

Do you wish to make a statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you do say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to say anything.

The accused does not call any witnesses.

I certify that the foregoing summary of evidence consisting of two pages was taken down by me in the presence of the accused and that RP 4 has been complied with.

In the Field,
17 Jan 45.

Officer detailed to take the Summary of Evidence.

Certified true copy

FIELD GENERAL COURT-MARTIAL

4 38B

Convened by Order of Maj Gen E.L.M. Burns Comd Cdn Sec GHQ dated 22 Jan 45
1 Ech - 21 A Gp

ACCUSED.

(As to the trial of two or more charged jointly see RP 14, 71, 109. As to records for showing (a) permanent or temporary rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, (re, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D170020	Gnr	Albert	Ruzsi	6 Cdn A Tk Regt RCA 12 CBN Bty

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 29/30 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, xxxx

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. No .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes ~~his~~ GLM (his) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) [illegible] GLM
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. Accused as witness. Do you intend to call witnesses on your behalf ?
Ans. No. Are they witnesses as to character only ? Ans.....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding ~~(s)~~ GLM (if any, of Not Guilty, and states to the accused that the finding ~~(s)~~ GLM of the Court on the 2nd charge ~~(s)~~ GLM (finding subject to confirmation, will be promulgated later.(1) [illegible] GLM
(*1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. Yes. Accused gives evidence
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 538. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. No .....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Oversea RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

Charge. (Insert "alternative" where applicable.)	Plea (See Instrs p 2.)	Finding (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	NOT GUILTY	NOT GUILTY	
2nd Alternative	NOT GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 482 fn 4 para 2, RP 44 ; special findings see RP 45 and MML p 713, and in lieu of 6-4 see RP 44 fn 2.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

to undergo detention for one (1) year

(Sgd) ..... Judge-Advocate, if any. 30 Jan 45 Date awarded. (Sgd) G.L. Macdougall Major President. (AP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 768.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(2). Sending back finding or sentence for revision by Court : AA 54(3), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirm

I certify that there are no illegalities or irregularities in the proceedings. (AA 57A. Delete if not used.)

(Sgd) E.L.M. Burns Maj Gen
Officer i/c Canadian Section
GHQ 1 Ech
Date 2 Feb 45 Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D-170020 Gnr RUZZI A RCA 9 CBR Bn CR 6 Sheet 1 8 Feb 45	Feb08 1942	????????? Capt & Adjt 9 Bn 2 C.B.R. Gp

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CHARGE SHEET "ELM"

The accused, D.170020 Gnr Albert RUZZI, 6 Canadian Anti-Tank Regiment, Royal Canadian Artillery, on strength 12 Battalion 2 Canadian Base Reinforcement Group, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Army Act
Sec 18(2)

WHEN ON ACTIVE SERVICE WILFULLY INJURING HIMSELF WITH INTENT THEREBY TO RENDER HIMSELF UNFIT FOR SERVICE

in that he

In the Field, on 31 Oct 44, while with his regiment, by discharging his rifle wilfully injured himself by shooting himself through the right foot with intent thereby to render himself unfit for service.

SECOND CHARGE
(Alternative)
Army Act
Sec 40

WHEN ON ACTIVE SERVICE NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field, on 31 Oct 44, while with his regiment, so negligently handled his rifle as to shoot himself through the right foot thereby rendering himself unfit for service.

"A.C. Hood"

In the Field,
17 Jan 45.

(A.C. Hood) Lt-Col
OC 12 Bn, 2 C.B.R.C.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

"ELM Burns"

In the Field,
22 Jan 45.

(E.L.M. Burns) Maj-Gen
G OIC
Cdn Sec GHQ 1 Ech, 21 A Gp.

"G.L.M"

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA5)
40(PAS)1697 (2608)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(b).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D170020	Gnr		Albert	RUZZI	(6 Cdn A Tk Regt RCA) 12 Bn 2 CBRG

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 22 Jan 45 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ". "ELMB"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~) "ELMB"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I also authorize appointment by the Offr to form the Court, by a Pd Offr as President, for the reasons I have entered hereon~~ "ELMB"
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~ "ELMB"
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	G.L. Macdougall	CAC - 9 Bn 2 CBRG

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	F.A. Baillargeon	Gen List - att Cdn Sec GHQ 1 Ech 21 A Gp
Capt	E.B. Van Dine	RCASC - att Cdn Sec GHQ 1 Ech 21 A Gp

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
	------"	

On Active Service in the Fd

in Belgium (Country.)

Date 22 Jan 45

"ELM Burns" (Signed personally. RP 105 fn 2.)

(E.L. M. Burns)

Maj-Gen (Rank.)

Commanding Cdn Sec GHQ 1 Ech 21 A Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Approved:
"B.W. Howard" Major
DJA

"GLM"

MEDICAL CERTIFICATE

I certify that I have this morning examined D-170020 Gnr RUZZI, A., and find him fit to undergo trial by Court-Martial.

"J.P. Middlebro'" Major
(Medical Officer)

Date - 29 Jan 45

"GLM"

MEDICAL CERTIFICATE

I certify that I have this morning examined D-170020 Pte Ruzzi, A., and find him fit to undergo trial by Court Martial.

"J.S. Tindall" Capt RCAMC
(Medical Officer)

Date - 30 Jan 45

1. D170020 Gnr Ruzzi, Albert., 6 Cdn A/Tk Regt att 12 Bn 2 CBRG.

"GLM"

D-2 No opening address.

D-3
First Witness for the Prosecution: Major J.P Middleboro, RCAMC, att 2 Cdn Gen Hosp., being duly sworn is examined by the prosecutor.

I recognize the accused whom I examined today. I found a through and through wound of his right foot one wound one inch below lateral maleolus and other about centre of sole 3 inches in front of back of the heel. Both wounds are healed. He still walks with a limp but I expect there will be little or no disability after two months. The wound could have been caused by weapon held in his own hands

Cross-examination:

I expect he will be able to go back to his unit but not before two months from now. He will have to go to a Con Dep:

RP 83(B) complied with.

Second Witness for the Prosecution: D-71451 Cpl Shaw, W.C., SIB, C Pro C, having been duly sworn states:

I recognize the accused. On 17 Jan 45 I saw the accused at 2 Cdn Gen Hosp. I identified myself and read a statement to him. He read it and identified it as his own He said he had been cautioned. He adopted it as his own.

The Defending Offr has no objections.

Statement read to the court and marked Exhibit "A".

RP 83(B) complied with.

Third Witness for the Prosecution: P-4524 Sgt Gargan, L.E., 74 Cdn A Tk Bty, RCA., having been duly sworn states:

I recognize the accused. On 31 Oct 44 at about 2145 hrs I was informed that one of our chaps was shot. I proceeded to the guard post. The accused had been moved to a nearby building. I went to the building. The accused informed me that on going to the latrine he had lain down his rifle and when he picked it up by the sling he slung it over his shoulder, barrel towards the ground; The slinging over his shoulder had caused the action to go off. No one saw the shooting. I made a check in the area but no one had seen the accident. He was on duty as a guard on a amn dump. They were ordered to load the rifles but there were to be no rds in the chamber. The safety catch was to be on. The mags were to be charged.

No cross-examination:

By the Court:

I found the rifle after the accident. There were about 6 rds in the mag. It was then in the house where he was being treated. There was an appended cartridge in the chamber The bolt was closed. As far as I know it was the accused own rifle.

RP 83(B) complied with.

Fourth Witness for the Prosecution: Defending Officer has been served notice re this witness under RP 76.

S-143215 Gnr Matthews, W.E., 74 Cdn A Tk Bty RCA having been duly sworn states:

I know the accused. On 31 Oct 44 about 2130 hrs I was on gaurd at Optacher Dump, 2 Cdn Corps. L/Bdr Cooper was posted with me. Gnr Ruzzi relieved me at 2100 hrs. I was taken down to the extreme end of the beat. There I was reported by Sgt Francis and told to stay there until relief came. At 2130 hrs I was walking up my beat when I heard a shot. I ran in the direction and there found Gnr Ruzzi lying on the rd. I went up to him and turned him over. He groaned. I asked him where he was shot, He said it was his foot. I cut off his boot and removed his stocking. We carried him to a house with a civilian. A Belgian lad went to get an NCO. On the way to the guards HQ he got a civilian doctor. The civilian doctor dressed the wound. Sgt Gargan came after the wound was dressed I did not talk to Gnr Ruzzi. I did not see the accident. I gave the empty cartridge to Sgt Gargan out of the rifle. It was pretty dark. He was hard ground. There was a path there.

No Cross-examination:

By the Court:

The rifle was lying along side the accusedwhen I found him. I couldn't tell how he had been carrying it. I think the muzzle was towards his feet. He was on his beat when I found him. He was conscious when I found him. I am not a particular friend of his. I just know him to see him.

RP 83(B) complied with.

D-6 The accused, D-170020 Gnr Ruzzi, A., 6 Cdn A/Tk Regt RCA having been duly sworn states:

It was not a good rifle. The body bolts were loose.

Accused demonstrates. He loaded the Rifle slung it over his shoulder, muzzle downwards, sling to the front. He says then it went off when he started to walk. It was slippery. It could have been my straps on the web belt or anything that made it go off. I had no bayonet. The trigger must have come into contact with something. There was nothing bothering my mind at the time. I've been over since Jul 4 1944. I've been with the Regt all the time. I was driving a truck for a time for the battery. I did a lot of guard duty. Our Regt had 17 pdr. I was on gun crew but we never fired. We were in a defensive posn. This was about my 3rd rifle. I had fired my rifle in practice. We had never been in action with the enemy. I'd like to go back to the Regt when I 'm fit. I can't remember saying anything after I was hit. I came to in a house.

Cross-Examination:

I didn't see my own rifle afterwards. I was the only one around when the accident happened. It was my rifle. I was never told not to have a rd in the chamber. We were told to keep the rifle loaded. I had a round in the barrel. I'm pretty sure I put the safety catch on. If I had a round in the chamber I should have had the

safety catch on. The enemy was over 10 miles away I think. I had nothing to do with pulling the trigger. My hand was not near the trigger. It must have caught on some of my equipment. I'd seen some shelling but never been close to the enemy. I had no reason to want to avoid service. I know a lot of people in my own battery.

By the Court:

It was an old rifle. I don't remember if the safety catch was loose or stiff. I'd had it about a month. I cleaned it once a day. The safety catch was not very stiff. I carry the rifle muzzle down often. It was damp and there was rain. I loaded the rifle every night I went on guard.

RP 83(B) complied with.

Closing address:

The accused has given his explanation. You have observed the demonstration. I ask you to dismiss the 1st charge.

Reply by the Prosecution:

There is not much evidence to convict under 1d(2). But there is evidence as to negligence. There is more to this case than has been demonstrated here. It does take quite a tug to discharge a weapon under normal circumstances. Credibility of the witness will play a big part in the decision. I leave it to the court.

E-3

Plea in Mitigation:

Born 8 Dec 1922. Single and from Montreal P.Q. Before enlistment he was a truck driver. Assigns $20.00 per month to his mother. Has been under close arrest since 17 Jan 45.

S.I.S., CANADIAN PROVOST CORPS — 8 Cdn Gen Hosp — "Ex 'A' "GLM"
Incre 'C' Cdn Sec GHQ 1 Mch, 21 A Gp. — 7 Dec 44.

S T A T E M E N T

Reg. No. D.170020, Gnr. RUZZI, Albert, of 74 Battery, 6 A/T Regt, R.C.A., 2 Cdn Corps, (attached 8 Cdn Gen Hosp.)

STATES:

I have been cautioned by S/Sgt Chester, S.I.S., Cdn. Provost Corps, that I am not obliged to say anything unless I wish to do so but that whatever I do say will be taken down in writing and may be given in evidence. I understand the meaning of this caution.

(Sgd) A Ruzzi

I am 22 years of age. I enlisted for Active Service at Patawawa, Ont., in August 42 in the R.C.A. and came to U.K. in Aug 43 with my present unit. I have had some training in England as a gunner, but until about the end of September of this year I have been a driver in the unit, using a 15 cwt for the Battery. In September I became an active gunner following a four day absence from the unit in September.

On 31 Oct 44, having been detailed to guard ammunition and explosives, I was taken by Sgt CARGAN to my post for the period of guard from 21.00 to 01.00 hrs. I was the only guard on that spot. Soon after Sgt Cargan left me I went into a nearby hedge to perform a necessity of nature. I had a touch of dysentry at the time, and for two weeks previous. When finished dressing - I also wore my great-coat - I started back to my post, first stopping to load my rifle. I had no bayonet. The rifle was cocked but I cannot be sure whether the safety was on or not. I slung the rifle on my right shoulder, the strap in front and the rifle pointing to the ground behind me. The ground was rough over which I walked back to my post and it was dark.

I don't know how it happened, but suddenly the weapon fired. I felt a hot pain in my right foot and I fell down. My head hit the ground and I remembered nothing more until I came to in the house of some civilians near the ammo dump. A civilian doctor was dressing my wound. I don't know how long this was after the shot. A boy who lived in the house went and brought Sgt Cargan and a L/Bdr from the billets about 2 km away. They came in a 'Quad' and took me to 2 C.C.S. where the wound was operated on and after two days I wasmoved to 9(Br) Gen Hosp, later to 108 (Br) Hosp, then to 111(Br) Hosp. Yesterday I was transferred to No. 8 Cdn Gen Hosp.

My wound, which was in the fleshy part of the right side of my right foot,has almost healed completely. I feel that I am ready for duty again.

I don't know what became of my rifle. I don't know the name of the people in whose house I found myself, but it was one of two houses on the outskirts of Oostaker, on a dirt road leading into the main road between Oostaker and Ghent. That is where the ammo dump was.

I gave a statement regarding my wound to Sgt Cargan, and another at No.9 (Br) Hosp and at No.111 (Br) Hosp.

My wound was caused accidently and I do not consider that I was negligent. It was necessary for me to carry a cocked and loaded rifle ready for action. I have read this statement and it is true.

(Sgd) A Ruzzi

Statement reduced to writing by (Sgd) H.W. Chester, S/Sgt
Witnessed by Pte. Collard, A.N.

Ex B "GLM"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	*Rank.*	*Name.*	*Regiment (or at the unit may be).*
D-170020	Gunner	RUZZI, A.	6 Cdn A Tk Regt RCA

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement, but is not to be referred to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded in the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For Within last 12 months ..... times.

For AA 15 (1) ..... 1 times.

For Since Enlistment or Appt ..... times.

For AA 15(1) ..... 0 times.

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. The accused at the present time is under sentence for .....

beginning on the ..... day of .....

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for .....

days in civil custody; and for 12 days in military custody, *i.e.*, ...

..... days in open arrest, ... days in close arrest; of

which ..... days were spent in hospital.

5. The present age of the accused is 5 Dec 22

6. The date of his attestation ~~taking up for military service~~ is 2 Sep 42

7. The service which the accused is allowed to reckon is .....

8. The accused is in possession of† The Canadian Volunteer Service Medal and Clasp.

†State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	.....
In the war substantive rank of	.....
In the acting rank of	.....

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

W1 A8900/1602 25,000 3/44 81-4701. Forms/B.296/War/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		Nil		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 11th day of December 1944

"W.A. Hand" Capt
Adjutant
6 Cdn A Tk Regt, RCA.

No Name Ruzzi, A. Sqn, Battery, or Company Corps RCA Date of enlistment 2 Sep 42 Badges Ex "C" "GLM"

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Service or Proficiency Pay | Character

MFM 6
(AFB 124)
40/PAM/136 (3438)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	17 Aug 44	Gnr		AWL from 1800 hrs 17 Aug 44 to 1320 hrs 21 Aug 44 (Close arrest from 1320 hrs 21 Aug) Sec 15(1) AA) (3 days 19 hrs 20 mins)	Documentary BSM Adams	7 days pay 7 days F.P.	26 Aug 44	LA Devine Lt-col	Aut forf of 4 days pay FR&I 149(1)(A) 5 days pay FR&I 149 1 (C) 11

Certified True Copy
11 Dec 44

"W.A. Hand" Capt
Adjutant - 6 Gun A Tk Regt RCA.

(PTO)

SUMMARY OF EVIDENCE

Summary of Evidence in the case of D.170020 Gnr RUZZI, A., 6 Cdn A Tk Regt RCA, on strength 12 Bn 2 CBRG, charged with, when on active service wilfully injuring himself with intent thereby to render himself unfit for service (AA Sec 18(2)), alternative, when on active service neglect to the prejudice of good order and military discipline (AA Sec 40).

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS — Major J.P. Middleboro, RCAMC, att 2 Cdn Gen Hospital, sworn, states:

On examination I find evidence of a through and through wound of the right foot. One wound is situated on the lateral side of the foot one inch in front of the external malleolus, the other wound is on the sole just in front of the heel in about the mid-line of the foot. The axis of the wound is about forty-five degrees to the axis of the foot. Both wounds are healed. Examination of the ex-rays shows the os calcis to have been traversed but no serious damage done. The foot is still tender but he is walking up to two miles. I expect there will be no disability after one to three months' further convalescence. The wound could have been caused by a weapon held in his own hands.

The accused declines to cross-examine this witness.

"J.P. Middleboro"
Witness.

SECOND WITNESS — A.71451 Cpl SHAW, W.C., Cdn Provost Corps, att 'C' Inc Cdn Sec GHQ 1 Ech, 21 A Gp, sworn, states:

On 17 Jan 45 at 2 Cdn Gen Hospital I interviewed the accused. I identified myself and produced a written voluntary statement. I read over the statement to the accused and asked him to identify it. He said it was his signatures and claimed it to be a true statement and admitted it being his own statement. I asked him if he had been cautioned at the time and he replied that he had. I read the statement over to the accused and he read it over himself. He admitted the statement was in the same condition as when he first signed it. This is the statement (Statement attached hereto as Exhibit 'A').

The accused declines to cross-examine this witness.

"W.C. Shaw"
Witness.

THIRD WITNESS P.4524 Sgt Gargan, L.E., 6 Cdn A Tk Regt RCA

I certify that in my opinion the attendance of this witness is, owing to the exigencies of the service, not readily procurable and a written statement of his evidence, signed by him, has been read to the accused and is attached hereto as Exhibit 'B'.

"J.R. Barre" Lieut

Officer taking Summary.

I do not require the attendance of P.4524 Sgt Gargan, L.E., for the purpose of cross-examination.

"A. Ruzzi"

Accused.

The accused is cautioned as follows:

Do you wish to make a statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you do say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to say anything.

The accused does not call any witnesses.

I certify that the foregoing summary of evidence consisting of two pages was taken down by me in the presence of the accused and that RP 4 has been complied with.

In the Field,
17 Jan 45.

"J.R. Barre" Lieut
Officer detailed to take the Summary of Evidence.

This is Exhibit "A" referred to in the Summary of Evidence in the case of D-170020 Gnr Ruzzi, A., taken this 17th day of January 1945.

"J.R. Barre" Lieut
Officer taking Summary.

STATEMENT OF R.4524 Sgt GARGAN, L.E.

On 31 Oct 44 I was a Gun Sgt in the 74th Cdn A tk Bty RCA attached to the Guard detail at the Oostachar Ammo Dump, 2 Cdn Corps. About 2145 hrs on that date a civilian lad came to our unit post and informed me that one of our men had been shot. The C/Sgt and the Officer i/c were away on duty. I obtained a vehicle and immediately proceeded to the dwelling adjacent to #6 Guard Post from where Gnr Ruzzi had been removed. I asked Gnr Ruzzi what had happened and he told me that he had laid his rifle down to go to the latrine and when finished he had seized his rifle by the sling and slung it over his right shoulder, muzzle down. This action had caused the weapon to go off and as a result he had been wounded in the right foot. At the time of my arrival a civilian doctor had dressed Gnr Ruzzi's wound and I removed him to No.2 C.C.S. I made extensive enquiries but could find no one who had actually seen the shooting.

Upon arriving at 2 C.C.S. Gnr Ruzzi volunteered a statement to me which I took down in writing. In reference to this statement Gnr Ruzzi said, "That's [redacted] exactly how it happened, Sarg."

The a/m original document was handed to Lt McGilton by me on my return to the unit.

In reference to my regulations covering the loading of weapons by the guards I was present when Lt McGilton instructed that the magazines were to be charged but no rounds were to be placed in the chamber and the safety [illegible] applied. (sgd) "L.E. Gargan" 11-12-44

This is Exhibit "B" referred to in the Summary of Evidence in the case of D-170020 Gnr Ruzzi, A., taken this 17 day of January, 1945.

"J.R. Barre" Lieut
Officer taking Summary.

I, D-170020 Gnr RUZZI, A., desire to have an officer assigned to represent me at my trial by Field General Court Martial.

I desire the services of Capt W.G.D. Hungerford if he is available.

Date - 17 Jan 45

"A. Ruzzi"
(Signature of Accused)

3 I. Pte. RYAN FE

O. H. M. S.

M. F. B. 270

1000 M 12-40 (5068-09-70)
H.Q. 1773-30-67

S-81670 Pte. Ryan, P.E. 3 I
No.1 M.T.V.R.D.

Correspondence to be PINNED here.

Army Form A.3

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 6th day of April, 1942.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN REINFORCEMENT UNITS, CDN ARMY, OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *and that it is not practicable to delay the trial for reference to a superior qualified officer;

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named. appointed or detailed hereunder.

* Omit if not applicable

*I am unable to appoint:—

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

*(3. Three Officers having more than one year's service.)

for the following reasons, namely:—

PROCEEDINGS REVIEWED.

Reviewing Officer (GAC) CMHQ
28 May 42

President.

Rank.	Name.	Regiment.
Major	G.M. Roper (Tor Scot)	No.1 Cdn M.G. Reinf Unit

Members.

Rank.	Name.	Regiment.
A Captain	from	1 Cdn Div Inf Reinf Unit
A Lieutenant	from	1 Cdn Div Inf Reinf Unit
A Lieutenant	from WAITING MEMBER	No.1 Cdn M.G. Reinf Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed [signature] Brigadier

Commanding Cdn Reinforcement Units.

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B-41570 PTE. RYAN, F.E. No.1 M.T.V.R.D., R.C.A.S.C.	First Charge A.A. sec 15(1)	Not Guilty.	Guilty. of absent without leave put only from 2200 hrs 14 Mar 42 until 1157 hrs 24 Mar 42. TOTAL. 9 days 13 hrs 57 mins. To undergo detention for one day. 10 Apr 42.	Confirmed [illegible] Brig
	See charge sheet attached.			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— NO SIR.

(Signed) [illegible] Brigadier (Signed) [illegible] Major

Commanding Can Reinforcement Units. *President.*
Convening Officer (*e*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 8th day of April 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) Court Clerk
*(4. ~~The officers under instruction~~)

were duly sworn.

* Omit if not applicable.

Signed this 10th day of April 1942

[illegible] Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

*~~I direct that the soldier named in the margin be not committed to prison until further orders.~~

Signed this 12 day of April 1942

[illegible] Brig
Confirming Officer.

Promulgated and extracts taken in the case of

(*a*) (Dated) 17th April 1942 (Signed) [illegible] Major T/OC

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(31752) Wt. 40115—893 500 m. 5/42 P. St. G. 1a.

C H A R G E S H E E T

The accused, B-61570 Pte. RYAN, F.E., No. 1 M.T.V.R.D., R.C.A.S.C., Canadian Army (Overseas),
is charged with,

WHILE ON ACTIVE SERVICE:

1st CHARGE
A.A. Sec. 15 (1)

Absenting Himself Without Leave,

in that he, at Louisburg Barracks West, Bordon, Hants., at 2200 hrs. 24 MARCH 1942, absented himself w that leave until 1330 hrs. 27 MARCH 42.

(Knox Thomson) Major,
Temporary Officer Commanding No. 1 MTVRD, R.C.A.S.C. C.A.(Overseas)

Bordon, Hants.

31 MARCH, 1942.

To be tried by Field General Court Martial

(F.R. Phelan) Brigadier
Commanding Cdn Reinforcement Units.
Convening Officer

Farnborough, Hants
This 6th day of April 42.

Major

MEDICAL OFFICER'S REPORT

I have this morning examined B-81570 Pte. RYAN, F.E. of No. 1 M.T.V.R.D., R.C.A.S.C., Can. Army, (Overseas) and found him free of infectious and contagious diseases and fit ~~unfit~~ to stand trial by Court Martial.

V. M. Cherry Capt. RCAMC
(A. Cherry
Medical Officer

Bordon, Hants.,
8 April, 1942

I have to-day examined B-81570 Pte. Ryan, F.E.
and have found him fit ~~unfit~~ to be tried by Field
General Court Martial.

A Cherry ..... Capt. Reserve
Medical Officer.

9 April, 1942
Borden, Hants.

No. 1 M.T.V.R.D. R.C.A.S.C. C.A.(Overseas)

10 APR 42

This is to certify that I have this morning examined B-61570 Pte. Ryan, F.E., of No. 1 M.T.V.R.D. R.C.A.S.C. C.A.(Overseas), and find him fit ~~unfit~~ to undergo trial by Field General Court Martial.

.....Capt., RCAMC

No B/481570, PTE RYAN F.E., No 1 MTVRD, RCASC, tried by Field General Court Martial at BORDON, Hants on 8th, 9th and 10th April, 1942.

PRESIDENT:	Major G.M. Soper,	1 CMGRU.
MEMBERS:	Capt. C.C. Tarbuck,	1 CDIRU.
	Lt. R. Currie,	1 CDIRU.

The order convening the court, the charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:-	Lt. R.J. Sweezey,	1 CASCRU.
Defending Officer:-	Major E.M. Miller,	1 CORU.

At 1025 hrs the trial commences.

The order convening the Court is read, signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A1. No, sir.

The President and members are duly sworn.

The officers under instruction are duly sworn.

Q2. Do you object to H66944, Sgt. T. Pyburn, HQ, C.R.U., acting as shorthand writer?
A2. No, sir.

The shorthand writer is duly sworn.

The charge sheet is signed by the President and annexed to the proceedings.

The accused is arraigned upon the charge in the above mentioned charge sheet.

Q3. Are you guilty or not guilty of the charge against you, which you have heard read?
A3. Not Guilty.
Q4. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?
A4. No, sir.

PROSECUTOR: On 10 Mar 42 Pte Ryan applied for a week end pass for 14-15 Mar 42. This application was handed in in the usual manner, but the pass was not granted. On 14 Mar 42, a Saty, Pte Ryan objected to the pass not being granted, and the matter was gone into with his Sub-Park officer, who told him he was to remain on duty. That Sat night, at tattoo roll call, Pte Ryan was not in his quarters, but had gone AWL. He returned to the unit on 27 Mar 42 at 1330 hrs from 15 Gen Hosp and during that time he was AWL from the unit.

1st witness for prosecution) No H-37252, CPL SCARFF H.J., No 1 MTVRD, RCASC, being duly sworn, is examined by the prosecutor:-

The witness identifies himself.

Q5. On 14 Mar 42 did you take the tattoo roll call?
A5. Yes, sir.
Q6. Was Pte Ryan present at that roll call?
A6. No, sir.

Q7. What did you do when you found he was not present?
A7. Reported his absence to the Orderly Sgt.
Q8. Did you investigate to find out if he was in the camp area?
A8. No, sir, the Orderly Sgt did.

CROSS EXAMINED BY DEFENDING OFFICER

Q9. Do you know Pte Harrison?
A9. Yes, sir.
Q10. Was Pte Harrison present at the time?
A10. No, sir.
Q11. Did you mark him absent on the tattoo report?
A11. No, sir.
Q12. But he was absent?
A12. He was on duty, sir; the boys in the room said he was on duty.
Q13. But he was absent?
A13. From his quarters, yes sir.
Q14. But you did not mark him absent?
A14. No, sir.
Q15. Then you did not mark him absent because the boys told you he was not on duty?
A15. Yes, sir.
Q16. And you subsequently found out he was not on duty?
A16. He was on duty at the switchboard.
Q17. Did you find that out yourself?
A17. No sir, the Orderly Sgt did.

2nd witness) for prosecution) No P-26079, SGT SMITH J.C., No 1 MTVRD, RCASC, being duly sworn, is examined by the prosecutor:-

The witness identifies himself.

Q18. On the night of 14 Mar 42 it was your duty to check up on tattoo roll calls, I believe?
A18. Yes, sir.
Q19. Did you check up on the tattoo roll call with Cpl Scarff?
A19. Yes, sir.
Q20. What did he report to you?
A20. That Pte Ryan was AWL from tattoo roll call.
Q21. Was there any mention of Pte Harrison?
A21. No, sir.
Q22. When Pte Ryan was reported absent did you check up at the switchboard to find out who was on duty?
A22. Yes sir, I did.
Q23. Unsuccessfully?
A23. Yes, sir.
Q24. Did you find out who was on duty at the switchboard?
A24. No sir, I just looked in there and saw it was not Pte Ryan; I could not say for sure who was there on duty at the time.
Q25. But Pte Ryan was definitely not on duty at the switchboard?
A25. No, sir.

CROSS EXAMINED BY DEFENDING OFFICER

Q26. Do you know if Pte Ryan was supposed to be on duty at the switchboard?
A26. No sir, I don't.
Q27. So long as they conform to the tour of duty so the switchboard is operated there is no outside interference from you?
A27. If they are not on duty they will be in their bk room at tattoo roll call
Q28. But is it not a fact the arranging for that duty is done entirely among the operators themselves?
A28. Yes, sir.
Q29. And all that is essential is that somebody be on duty at the switchboard?
A29. Yes, sir.

Q30. THE COURT: You did not inquire from the person on duty at the switchboard where Pte Ryan was?
A30. No sir, I did not.

Q31. You have no idea who this man was who was on duty at the time?
A31. No sir, I have not.

3rd witness) for prosecution) No D-81532, L/CPL HENDERSON R.M., No 1 MTVRD, RCASC, being duly sworn, is examined by the prosecution:-

The witness identifies himself.

Q32. How are you employed?
A32. With the RP, No 1 MTVRD.
Q33. On 27 Mar 42 I understand you were sent for by Lieut McDougall?
A33. Yes, sir.
Q34. What for?
A34. He asked me to escort Pte Ryan to the guard room.
Q35. Where was Pte Ryan at this time?
A35. In "A" Bk Orderly Room.
Q36. Were any papers handed to you at that time?
A36. No, sir.
Q37. What time of the day was this?
A37. Approx 1330 hrs on 27 Mar 42.

No cross-examination.

PROSECUTOR: I wish to submit to the court documentary evidence in connection with the hospitalization of the accused.

The defence offering no objection, the above mentioned documents are read, signed by the President, and attached to the proceedings.

The prosecution is closed.

DEFENCE: Sir, we have heard evidence that the accused was absent from a tattoo roll call and nothing more, except documentary evidence which shows he was in hospital, and there is nothing before the court to prove the period of absence. It is essential that two things be shown: one, that he was absent and when he returned or was apprehended, or when his absence ceased, and involuntary absence is not to be charged against him. It is clear from the evidence that he was in hospital. I refer you to A.A. 15, p.441 of the MML. "As soon as an absentee is taken into custody (either civil custody, or open or close arrest), whether on surrender or on apprehension, his absence ceases to be voluntary; K.R. 567. If, however, he is merely ordered (e.g. by an assistant provost marshal or rly tpt officer) to rejoin his unit at once, his absence without leave continues until he so rejoins." The para above that reads, "Involuntary absence due, for example, to illness or arrest by the civil power, is not ordinarily an offence under this section." Still higher up it reads, "The particulars should state the date when the absence began, and the date when it ended." We have here evidence that the accused was absent from tattoo roll call and was in hospital, but the length of his involuntary absence is not before the Court.

THE COURT: You have no witnesses to call?

DEFENCE: No sir, I think there are two alternatives for the court, to either dismiss the charge for want of evidence or refer it to the convening officer for what action he considers necessary.

PROSECUTOR: Pte Ryan was AWL as of 14 Mar 42. We have no record of his going into hospital or of being apprehended. We have some record of him being admitted to 15 Gen Hosp, or being turned over to 15 Gen Hosp, and of being turned into our guard room as of 1330 hrs, 27 Mar 42.

THE COURT: Is there any evidence as to when this man was admitted to hospital?

PROSECUTOR: No, sir.

THE COURT: Is there any way of getting evidence on this?

PROSECUTOR: I presume it would be possible, sir, but I don't know.

DEFENCE: I pointed this out to the prosecutor before we came into court, because it is the duty of both of us to see the matter is put before the court properly.

THE COURT: Is Putney Hosp a civil or a military hosp?

DEFENCE: I don't know, sir.

The Court is closed to consider their decision.
The Court being re-opened, the accused is again brought before it.

THE COURT: The ruling of the Court is that we adjourn for further evidence against Pte Ryan.

WHEREUPON THE COURT ADJOURNED SINE DIE

On 9 Apr 42, at 1400 hrs, the Court reassembled, pursuant to adjournment; present the same Members as heretofore.

The Court being re-opened, the accused is again brought before it.

THE COURT: We will now continue with the evidence. Will the prosecutor please continue where we left off?

PROSECUTOR: I have here, sir, a statement from the Metropolitan Police, signed by Frederick Jocelyn.

DEFENCE: May I see it for a moment, please? I have no objection to it, but it is not evidence. This is actually a police statement. For the purposes of a summary of evidence it would be admissible, but it is not admissible as evidence here. To prove this document it would be necessary for a police officer or some other person to be present.

THE COURT: Produce the statement to the court, please.

The prosecutor presents the document to the Court.

DEFENCE: It is a signed statement by a Police Supt. I would refer the court to p.14 of "The Green Book," which is an authority on FGCMs. This is actually a policeman's statement which might conceivably be accepted in a summary of evidence. The certificate must comply strictly with the requirements of the Act, and must be produced at the trial by a witness on oath, identifying the accused as the person referred to therein.

PROSECUTOR: I don't see how it is not evidence unless the prosecutor wishes to put the Govt to more expense in bringing someone here to swear to it.

THE COURT: The statement will not be accepted by the Court in view of the footnote to s.165 of the AA, at the top of p.570, MML. Have you further evidence to produce that this man was admitted to this hosp?

PROSECUTOR: I have no further evidence to produce, sir.

THE COURT: Therefore I will have to ask you to produce the person who signed this statement.

PROSECUTOR: Owing to the expense to the Govt, we certainly cannot have the man produced today. That statement was taken this morning and a specisl D.R. was sent to get it.

DEFENCE: If AF O.1618 was signed it is admissible in evidence and no expense is required. There is a RO which sets out A.F.O.1618 as being the correct form. This man was brought in by the Prov, who should have delivered that certificate with him; they do it every day.

THE COURT: I will have to ask you to produce this proper certificate or the policeman to identify the accused.

PROSECUTOR: I cannot do it right now; it is impossible. We will have to adjourn the court again. In fairness to the accused we will adjourn the court until 1100 hrs tomorrow morning.

DEFENCE: If the accused had been charged for the period he was absent he would have been prepared to plead Guilty, but when the prosecutor suggests the accused and myself are unfair in putting them to this expense, I assure the court that the accused and myself have done everything possible.

THE COURT: It is not a question of expense to the Govt at all; the man is on trial and he is entitled to a fair trial.

Upon the shorthand writer pointing out to the Court that he would be unable to attend on 10 Apr 42 owing to another assignment, the President announced that the remainder of the proceedings would be completed without a shorthand writer, same to be attached to this transcript.

Whereupon the Court adjourned at 1440 hrs, 9 Apr 42, until 1100 hrs, 10 Apr 42.

CERTIFIED a true and correct transcript of that portion of the proceedings I attended:-

F Stephens Sgt.

Shorthand Writer.

F.G.C.M. 10/4/42. at N.T.V.R.D. Bordon. Hants.

Case of Pte Ryan ~~EE~~ B81570.

Medical certificate produced.

Evidence of Prosecuting officer:—

Accused detained by P.C. Josland at 1157. 24/3/42.

Defence agree to take this as evidence which has been submitted to court as exhibit "A"

Prosecuter had no additional evidence to give the court.

Court was cleared for finding.

Court reopened.

~~Statement~~

~~Prosecuter~~ Prosecuter sworn in and gave evidence of character (AFB 296 and M.F.M. 6)

Statement in mitigation of punishment given by Defending officer.

Exhibit "B"

Court ~~cleared~~ closed.

J. Morgan
Major

ABSENTEE REPORT.

Squadron, Battery, Troop, Company

Army Form B 200
(In sheets of 6.)

Army No.	Rank and Name.	When Absent.	Hour of Return	In what state.	Remarks.

Date 15-2-42

Orderly Sergeant.

IN REPLY PLEASE QUOTE
NO.

CANADA

Department of National Defence

15 Ft Gen Hosp. 19
March 27th 1942

Dvr Frank Ryan B81570

This man was sent to this hospital from Putney Hospital. Examination shows no disease. He is to return to his unit as fit for duty.

R Ross Ford
Capt.

Ryan dismissed on four hours routine
escort of No 6 Provost Coy at 1345 hrs

[illegible]

[illegible]
Major

Sta Camp
1200 hrs
27/3/42

M. F. B. 239
450M—1-40 (3741-2-2)
H.Q. 1772—29-154

Exhibit "A"

METROPOLITAN POLICE.

No. 992.

STATEMENT OF WITNESS.

Barnes Station. V Division.

April 9 — 1942.

Name Frederick Joslin

Address Barnes Police Station

Age 34. Occupation Special Constable 193 "V"

Statement: On March 24th 1942 at 11.57 am at Priest Bridge Barnes I saw Private Frank Ryan No B.81570 Royal Canadian Army Service Corps lying on the pavement, obviously in great pain and unable to move. The Barnes Borough Ambulance was called and conveyed Pte Ryan to Putney Hospital accompanied by me, he was seen there by Dr W.S.T. who detained him ~~here~~ and informed me that he was unable to diagnose the nature of his illness. I then forwarded Pte: Ryans particulars to the Station Offices at Barnes by Police telephone so that the necessary authorities could be informed.

Signature Frederick Joslin - 3c 193 V.

Signature witnessed by [illegible]

M.P.-19394.200.000 Dec./1939 96 (8)

Exhibit "B"

Ryan – Notes by Defending Officer.

accused Telephone orderly on duty 8 hrs daily and last orderly days when working Nights.
Telephone operators had duty & Leave Roster.
Applied for Leave when due, arranged to meet brother
Leave refused – Long hours, hard work. Tiresome
Natural disappointment and resentment – beat A.W.L.
Intended to return when Leave would have been up.
Sick. Reported to police after 9 days.

Service 2½ years.
No record for 2 years, 2 Minor offences lately.

Returned to Unit. Wrongly charged with 11 days absence.
Should have been tried by O.C. Delay in applying for C.M. delay in not having proper evidence.
accused assisted to avoid further trouble or delay.

accused will lose pay. 7 R. & D.

	A.W.L.	9 days – 13 hrs. 57 mins	
In Close arrest	Hosp.	4	
	Waiting F.G.C.M.	11	Not accounted for
	Come & Temp	3	due to want of prosecution evidence
		27	

Suggest this loss of pay and Close arrest ample punishment, Considering record and evidence attitude of Unit / in refusing Leave / in asking for F.G.C.M. / for charging accused with 11 days he should not be charged with / in delaying application / in not obtaining proper evidence / shows accused not only one to blame for A.W.L.

Major

WITNESSES FOR THE PROSECUTION

1. M-[illegible] Col. Dearff, H.C., No. 1 M.T.V.R.D., R.C.A.S.C.
2. P-28070 Sgt. Smith, J.C., No. 1 M.T.V.R.D., R.C.A.S.C.
3. B-81542 L/C. Henderson, R.M. No. 1 M.T.V.R.D., R.C.A.S.C.
4. A-9051 Sgt. Hamlin, E.P., No. 1 M.T.V.R.D., R.C.A.S.C.

WITNESSES FOR THE DEFENCE

1. B-81501 C.S.M. Hutchison, T., No. 1 M.T.V.R.D., R.C.A.S.C.
2. B-46357 Pte. Harrison, I.B., No. 1 M.T.V.R.D., R.C.A.S.C.

No. 1 M.T.V.R.D., R.C.A.S.C., Cdn. Army. (Overseas)

Officer Commanding,
No. 1 M.T.V.R.D., R.C.A.S.C., C.A.(O.)

It is my desire to have an officer appointed to defend me at my trial by FIELD GENERAL COURT MARTIAL.

Pt. F.E. Ryan.
(B-31570 Pte. Ryan, F.E.)

31st March, 1942

SUMMARY OF EVIDENCE

By direction of the Officer Commanding, the evidence of all witnesses is taken under oath.

1st WITNESS

H-37252 Cpl. SCARFF, H.J., No. 1 M.T.V.R.D., R.C.A.S.C., Cdn. Army, (Overseas), having been duly sworn, testifies as follows:

Q. 1 Who are you and how are you employed?

A. I am H-37252 Cpl. Scarff, H.J., # 1 M.T.V.R.D., R.C.A.S.C., C.A.(O.), employed as administration corporal of No. 4 Sub Park.

Q. 2 You have heard the charge sheet read concerning Pte. RYAN, F.E. What do you know of this case?

A. At 2200 hours, 14 March, 1942, I took the Tatoo Roll call and Pte. Ryan was not present. I marked him as absent on the report and reported his absence to the orderly sergeant.

Q. 3 Pte. Ryan, do you wish to cross examine this witness?

A. Yes, Sir.

Q. 4 (Pte. Ryan) Cpl. Scarff would I not have been on duty at tatoo roll call and therefore not in my room?

A. That is so, but another switchboard operator was not present in the room and upon investigation I found that he was taking your place at the switchboard.

Q. 5 (Pte. Ryan) Did I not give you a written application for a pass for seven days on Tuesday 10th March?

A. Yes, I received the application in question and submitted same to Lieut. ERSKINE, my Sub Park officer, for his approval. Lieut. Erskine informed me that he would submit the application to the 2 i/c for his approval. Since thirty days had not elapsed since you had undergone punishment your leave was not granted.

Q. 6 (Pte. Ryan) Did I not point out to you that according to the duty roster, the week-end 14/15 March was my week-end off duty?

A. Yes. According to ~~for~~ the duty roster it was your week-end off duty and I referred you to the C.S.M.

Q. 7 (Off. taking summary) Pte. Ryan have you any more questions to ask this witness?

A. No, Sir.

H.J. Scarff
.....
(H-37252 Cpl. Scarff, H.J.)

2nd WITNESS P-28079 Sgt. Smith, J.C., No. 1 M.T.V.R.D., R.C.A.S.C., Cdn. Army, (Overseas), having been duly sworn testifies as follows:

Q. 1 Who are you and how are you employed?

A. I am P-28079 Sgt. Smith, J.C., No. 1 M.T.V.R.D., R.C.A.S.C., C. A. (O.) employed as duty sergeant of No. 4 Sub Park.

Q. 2 Pte. Ryan is charged with being A.W.L. from 14th March, 1942 until 27th March 1942. What do you know of this case?

A. On the 14th March, 1942, I was Orderly Sergeant and it was my duty to check up on Tattoo Roll Calls at 2200 hours. On making my check it was reported to me by Cpl. Beriff of No. 4 Sub Park that Pte. Ryan was absent without leave from his quarters. I made further enquiries but was unable to locate him in the barrack area. I made out an absentee report the following morning and turned it into the ~~xxxx~~ ~~xxxx~~ orderly room.

Q. 3 To your knowledge is there a duty roster kept for switchboard operators?

A. Yes, Sir, but it is kept among the three switchboard operators and hangs on the wall above the switchboard.

Q. 4 From your check up can you tell me who ~~xxx~~ was the operator on duty at 2200 hrs. 14th March, 1942?

A. No, Sir, I am not sure but there are only three operators. One of them, Pte. Clermont, J., was on leave and Pte. Ryan was not on duty at that time. The switchboard operators arrange their duties among themselves.

Q. 5 Pte. Ryan do you wish to cross examine this witness?

A. Yes Sir.

Q. (Pte. Ryan) Sgt. Smith, did you have any knowledge prior to 2200 hrs., 14th March that I was A.W.L.?

A. No, I had none.

J. C. Smith
(Sgt. Smith, J.C., No. 1 M.T.V.R.D.,

3rd WITNESS B-81582 L/Cpl. Henderson, R.M. No. 1 M.T.V.R.D., R.C.A.S.C., Cdn. Army, (Overseas), having been duly sworn testifies as follows:

Q. 1 Who are you and how are you employed?

A. I am B-81582 L/Cpl. Henderson, R.M., No. 1 M.T.V.R.D., R.C.A.S.C., Cdn. Army, (Overseas), employed ~~xx~~ on regimental police duties.

Q. Pte. Ryan is charged with being A.W.L. from 14th March, 1942 until 27th March 1942. What do you know of this case?

3rd WITNESS L/Cpl Henderson (Continued)

A. On 27th March, 1942 at approximately 1345 hrs., I was called by Lieut. MacDougal to escort Pte. Ryan to the guard room. I did so and turned him over to the sergeant of the guard. That is all I Know of the case, Sir. L/Cpl Henderson. R.C.

THE ACCUSED DECLINED TO CROSS EXAMINE THIS WITNESS.

4th WITNESS A-9051 Sgt. Martin, E.B., No. 1 M.T.V.R.D., R.C.A.S.C., C.A.(O.), having been duly sworn testifies as follows:

Q. 1 Who are you and how are you employed?

A. I am A-9051 Sgt. Martin, E.B., No. 1 M.T.V.R.D., R.C.A.S.C., Canadian Army, (Overseas) employed as duty sergeant of No. 2 Sub Park.

Q. 2 Pte. Ryan is charged with being A.W.L. from 14th March until 27th March. What do you know of this case?

A. Sir, on 27th March, 1942, I was the guard commander at No. 1 M.T.V.R.D. At approximately 1330 hrs. L/Cpl. Henderson turned over Pte. Ryan to me to be held under close arrest. I locked him in the guard room and entered his presence in the guard commanders report. That is all I know of this case, Sir. E.B. Martin Sgt.-A9051

THE ACCUSED DECLINED TO CROSS EXAMINE THIS WITNESS.

The accused was shown a signed statement by Capt. D.R.E. MacLeod of the 15th General Hospital with a notation on the same paper by Lieut. MacDougal of No. 1 M.T.V.R.D. and was asked:

"Have you any objection to these statements being admitted as evidence?"

The accused answered: "No, Sir."

The accused was asked: "Have you any wish that these officers be compelled to attend this Summary of Evidence, having due regard to the exigencies of the Service and the expense incurredcin having them appear, in order to cross examine them?"

The accused Answered: " No, Sir."

5th WITNESS (Documentary) " 15th Gen. Hosp. March 27th, 1942

Dvr. FRANK RYAN B-81570

This man was sent to this hospital from PUTNEY HOSPITAL. Examination shows no disease. He is to return to his unit as fit for duty.

Signed (D.R.E. MacLeod, Capt.)

6th WITNESS (Documentary)

Statement of Lieut. MacDougall No. 1 M.T.V.R.D.

" Ryan checked in from London under escort of No. 6 Provost Coy. at 1345 hrs.

Signed (G. McDougall, Lieut.) "

Documentary Evidence

ABSENTEE REPORT dated 15-3-42 signed " J.C. Smith, Orderly Sergeant."

The accused, having been duly cautioned in accordance with Rule of Procedure 4 (E), declines to make a statement.

Q. 1 Pte Ryan do you wish to call any further witnesses?

A. Yes Sir. C.S.M. Hutchison, T. and Pte. Harrison, I.B.

7th WITNESS

B-61501 C.S.M. Hutchison, T., No. 1 M.T.V.R.D., R.C.A.S.C., Cdn. Army, (Overseas), having been duly sworn in testifies as follows:

Q. 1 Who are you and how are you employed?

A. I am B-61501 C.S.M. Hutchison, T., No. 1 M.T.V.R.D., R.C.A.S.C., Canadian Army(Overseas) employed as C.S.M. of No. 1 M.T.V.R.D.

Q. 2 Pte. Ryan has been charged with being A.W.L. from 14th March, 1942 until 27th March 1942. What do you know of this case?

A. Pte. Ryan approached me at approximately 1330 hrs. 14th March,1942 regarding Pte. Clermont going on week-end leave as Pte. Ryan claimed that it was his own week-end off duty. I informed Pte. Ryan that he would have to remain on duty as Pte. Clermont had been granted his pass. Pte. Ryan was still not satisfied; I therefore telephoned his sub Park officer, Lieut. Erskine, who informed me that as Pte. Clermont hadcapplied for his week-end pass and Pte. Ryan had not, Pte. Ryan would re main on duty. I conveyed this message to Pte. Ryan.

Q. 3 (Pte. Ryan) Did you know, Sir, that I was A.W.L. prior to 2200 hrs. on the fourteenth of March?

A. No, I did not.

.....
(C.S.M. Hutchison, T.)

8th WITNESS

B-68387 Pte. Harrison, I.B., No. 1 M.T.V.R.D., R.C.A.S.C., Cdn. Army, (Overseas), having been duly sworn testifies as follows:

Q. 1 Who are you and how are you employed?

A. I am B-68387 Pte. Harrison, I.B., No. 1 M.T.V.R.D., R.C.A.S.C., Canadian Army, (Overseas) employed as a switchboard operator at A.Park H.Q.

Q. 2 Pte. Ryan has been charged with being A.W.L. from 14th March, 1942 until 27th March, 1942. On the night of 14th March, 1942 at 2200 Hours were you on duty at the switchboard?

A. Yes Sir.

8th WITNESS Pte. Harrison (Continued)

Q. 3 According to the duty roster was it your turn to be on duty?

A. Yes Sir.

Q. 4 At what hour did you come on duty?

A. At about 1230 hours 14th March.

Q. 5 At what time was the next operator to come on duty?

A. One was to relieve me for one hour at supper time and the next operator was to take over at 0830 hrs 15th March.

Q. 6 Was this carried out?

A. No, Sir.

Q. 7 Who was to relieve you at 0830 hrs. 15th March?

A. According to the duty roster Pte. Clermont was to relieve me but he had been granted a pass and was on leave.

Q. 8 Who relieve you next morning at 0830 hrs.?

A. Pte. Griffiths relieved me.

Q. 9 (Off. taking summary) Pte. Ryan do you wish to ask this witness any questions?

A. Yes Sir.

Q.10 (Pte. Ryan) Was there ever any other deviations from the duty roster as drawn up without mutual agreement of the parties concerned?

A. So far as I can remember, no.

Q.11 (Pte. Ryan) When you were not relieved for supper what action did you take?

A. Nobody came to relieve me at 1730 hrs., and at approximately 2030hrs., I telephone the Orderly Officer who had the Orderly Sergeant detail Pte. Joe to relieve me.

J.B. Harrison
.....
(Pte. Harrison, J.B.)

Certified that Rules of Procedure 4 (c), (d), (e), and (g) have been complied with.

Taken down by me in the presence and hearing of the accused on the thirtieth day of March, 1942, at Louisburg Barracks, West, Bordon Hants.

R.J. Sweezey
..... Lieut.
(R.J. Sweezey) No. 1 Cdn. A.S.C.
Reinf. Unit C.A.(O.)

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

B-81570 Pte. Ryan, F.E. of the No. 1 M.T.V.R.C., R.C.A.S.C. C.A.(E)

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with:—

	*Within last 12 months.	*Since Enlistment.
For A.A. CCO 16 (1)	2 times	2 times.
For	times	times.
For	times	times.
For	times	times.

~~*Number of instances of gallantry or distinguished conduct.~~

~~or~~

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted.

or

~~Previous convictions†~~ of the accused by a court martial ~~or a civil court~~, summary awards under Section ~~47 of the Army Act~~, and dispensations with trial under Section 73 of the Army Act, are set out in the ~~Schedule annexed to this~~ statement.

Note.—The Regimental and Squadron, Battery or Company Conduct Sheets, or so far as they are to be produced in Court with this statement but are not to be handed in, are to be produced in the proceedings.

See Para. 664, K.R. 1923.

*The numbers herein stated should correspond with the numbers of *Entries* in the Conduct sheets, preference being given to the most serious offence in each entry, and to any recognized *good acts or gallantry or distinguished conduct.*

†*Instructions.*—If the charge is for drunkenness the number for drunkenness must be stated separately and dated.

Wt. 42515/664 30,000 2/40 W. S. Ltd. 51—6804

3. The accused is not under sentence at the present time,

or,

The accused at the present time is under sentence for

beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges

for 0 days in Civil Custody,

and 6 12 days in Military Custody.

Total 6 12 days. vide at 8 Sep 42

Of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service attestation paper is 27 6/12 yrs

6. The date of his attestation specified in his attestation paper is 6 SEP 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 6/12 yrs

8. The accused is entitled to deferred pay or gratuity in respect of 2 6/12 years' service.

9. The accused is entitled to reckon 2 6/12 years' service for the purpose of determining his pension, &c.

10. The accused is in possession of/is entitled to no military decoration or military reward/or is in possession of or entitled to

~~11. *(If the accused is a warrant officer.)* The accused before he was made a warrant officer last held the regimental rank of~~

12. *(In the case of an officer.)* The accused holds in the army the rank of , dated , and in his regiment (*or* corps *or* department) the rank of dated

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

	Date of Promotion.
In the rank of	years,
In the rank of	years,
In the rank of	years.

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

G H Stopel
Major

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name of the

Note.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.

Description of Court by which tried, or status of Officer dispensing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

NIL

(Continued overleaf.)

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial	Date and place of Trial or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority	Punishment remitted

NIL

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 8th day of April 1942

Major
T/Lt Col

No881670 Name Ryan F.E. | Sqn., Battery, or Company | No 1.M.T.V.R.D.-R.C.A.S.C. Corps | Date of enlistment | 6-9-39. | G.C. Badges | | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 122) (M.-Hqs 15/660) (5.) 1172-43-18

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with Brief	By whom awarded	Remarks
		NO ENTRIES ON COMPLETION OF TWO YEARS OF SERVICE 6th SEPTEMBER 1941							
XXXX

47-26

Mt. Ryan - 9.

RECORDED AT CMHQ IN AB 160

FIELD GENERAL COURT-MARTIAL

CPA96 (To front of AFA81) 4/38B

RECEIVED 19 MAR 1945 JAG BRANCH C.M.H.Q.

Convened by Lt-Col J E C Pangman AComd 4 CDN INF BDE dated 25 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-158002	PTE	GEORGE	RYAN, G	ESSEX SCOT

PROCEEDINGS REVIEWED
W.L. Thompson Capt.
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held at the Fd in (*country*) HOLLAND on (*date(s)*) 15 MAR 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See book of Convening Order, CF 395, for notes and instrs on how to record addresses, evidence, etc. which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1045 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ as interpreter? Ans

~~The Interpreter is sworn.(1) Do you object to~~ as shorthand writer? Ans

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No SIR (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	J.M. BOSTWICK	R.H.A.
Member	CAPT.	R.L. Goodenough	Essex Scots
Member	LIEUT.	J.H. TAYLOR	R Regt C.
Judge-Advocate			
Prosecutor	LIEUT.	C.D. GATTON	~~R Regt C~~ Essex Scots
Defending Offr	LIEUT	J.M. Haggans	Essex Scots

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (b) and fn 2 were not followed. See DI p 3.)

A8. The accused D 158002 Pte Ryan G. before arraignment make(s) (no) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~not~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. ~~The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form.~~

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Vol. IV Folio 63

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO SIR. (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "X", initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 80(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ..... Do you intend to call witnesses on your behalf ? Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(B). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF AF5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (a), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans M 425 H 16655 LSGT JACKSON G.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "Z" and Ex "Y" respectively.(3)
(*1. MFB 355 or AFB 2927. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans YES - MY DEFENDING OFFICER (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(e), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 809, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D 158[illegible]2 Pte Ryan George

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	15 (1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and re loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 7 days, of which NIL days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To forfeit all ordinary pay for a period of Ninety days.

(Sgd) ..... 26 Jan 45 (Sgd) J M Bostwick, Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

Date 27 Jan 45 (Sgd) [illegible]
Commanding A/Brig a/Div Engrs
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D 15800[illegible] Pte Ryan, George	28 Jan 45	R W Mannock Capt a/Adjt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CHARGE SHEET

The accused, D 158002 Pte George RYAN, a soldier of the Canadian Army Overseas, 1st Bn Essex Scottish Regiment on active service is charged with:

FIRST CHARGE: WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE
Army Act
Sec 15(1)

in that he

in the field, on 8 Jan 45 absented himself without leave from 1300 hrs 8 Jan 45 until surrendering himself at Brussels at 1400 hrs 18 Jan 45

(Absent 10 days 1 hr)

(T.E. STEELE) Maj
A/Officer Commanding
ESSEX SCOTTISH REGIMENT

In the field
22 Jan 45

To be tried by Field General Court Martial

A/Comd
4 Cdn Inf Bde

In the field
25 Jan 45

I wish the services of a defending officer to be detailed by the Adjutant

In the field
22 Jan 45

Sgd "G Ryan"

26 Jan 45

D-158002 Pte Ryan. G.

I have medically examined the a/m, and find him to be physically fit to stand trial by FGCM.

G. Sowden Capt.
10 Cdn FS Amb.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR (Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-156002	PTE	GEORGE	RYAN	ESSEX SCOT

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 25 JAN 45 endorsed by me, (or by an officer(s) acting for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~AND THAT IT IS NOT PRACTICABLE THAT THE TRIAL BE POSTPONED TO A SUBSEQUENT SITTING~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have endorsed hereon.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate of the Court mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Unit.)
Maj	J M Bostwick	PHLI

(Must be named. RP 106.)

MEMBERS.

A Capt to be detailed by CO Essex Scot

A ~~Capt~~ Lieut to be detailed by CO R Regt C

(Named or detailed. RP 106.)

WAITING MEMBER.

A ~~Capt~~ Lieut to be detailed by CO Regt C

(Named or detailed, if any. RP 106.)

JUDGE-ADVOCATE.

N/A

(Must be named, if any. RP 106.)

On Active Service in the Fd

in HOLLAND (Country.)

Dat 25 JAN 45

(Signed personally. RP 105 fn 2)

(J E C FANGNAN) LT-COL (Rank.)

A Commanding 4 CDN INF BDE Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Statement of Character Wit for Pte Ryan G.

L/Sgt Jackson G. H 16655 on being duly sworn in states — Pte Ryan's conduct leaves nothing to be desired, I don't know of any reason for him not leave. He is a good worker in the line.

Question by the court - How long has Pte Ryan been in the Platoon?

L/Sgt Jackson - He was in the 4th Div. before I joined it. I have been with them four months.

Statement in plea of mitigation for Pte RYAN. G.

I have talked to this soldier and to some of his comrades and have gathered some information that I desire to present to the court. Pte RYAN joined the unit at ANTWERP. He was remustered involuntarily from the CAC, after having served in it for one year. He has never had a term of LOB or a 48 hr. leave since that time. He had asked to see his Coy Comdr, through the proper channels, regarding the matter and was repeatedly put off. He saw others having these privileges over whom he had priority. This, combined with inactivity, led him to do wrong.

I wish to point out that Pte RYAN has no parent living. His father died before he enlisted, and his mother, some years previous to that. He is only 20 yrs old now, and so, as you can see from that, he did not have the guidance to stabilize the mind, to teach a man to think for himself, for all the time a boy turning to man should have it. As a result he took this matter in his own hands.

Pte RYAN realizes now what he did and is willing to accept the consequences, so that he can return to his comrades soon. I request the court to consider the above before deciding those consequences.

Exhibit "A"

Summary of Evidence in the case of D-158002 Pte George Ryan, 1st Bn The Essex Scottish Regt. a Soldier of the Canadian Army Overseas.

The accused is informed of his rights.

The C.O. directs that the evidence be taken on oath.

First witness for the prosecution: A-103385 A/Sgt Salisbury J.S. 1st Bn The Essex Scottish Regt:

A written statement of this witness' evidence, purporting to be signed by him has been read to the accused and is included in this summary (attached as Exhibit "A") Having regard to the loss of time involved the attendance of this witness cannot in my opinion be readily procured.

The accused does not demand the attendance of this witness for cross-examination.

R.W. Meanwell A/Capt
Officer detailed to take the summary

Second witness for the prosecution: Lt. C.J. Jeffrey, "D" Coy, 1st Bn The Essex Scottish Regt.

A written statement of this witness evidence, purporting to be signed by him has been read to the accused and is included in this summary (attached as Exhibit "B") Having regard to the loss of time involved, the attendance of this witness cannot in my opinion be readily procured.

The accused does not demand the attendance of this witness for cross-examination

R.W. Meanwell A/Capt
Officer detailed to take the Summary

EXHIBIT "A"

I am A103385 A/Sgt Salisbury VS of 18 pl 'D' Coy of the Essex Scottish Regt. I took a roll call of my pl at 1300 hrs 8 Jan 45 and found D158002 Pte Ryan G who is a member of my platoon to be absent. I made a complete search of the billet and area and could not locate him. I have not seen Pte Ryan since that time and to the best of my knowledge he is still absent.

Sgt. Salisbury V.S.

In the field
8 Jan 45

A103385 A/Sgt Salisbury VS
18 Pl 'D' Coy
Essex Scottish Regiment

EXHIBIT "B".

STATEMENT OF EVIDENCE IN THE CASE OF

D158002 PTE RYAN G

"I am Lt CJ Jeffrey of "D" Coy, The Essex Scottish Regiment. I had been detailed as offr IC leave party proceeding to Brussels. On 18 JAN 45 at about 1400 hrs, I listed the names of those personnel present at the RV in Brussels for the return trip to the unit. I took the name of a soldier who identified himself to me as D158002 Pte Ryan, G. He came back to the unit with our transport and on arrival at "A" Echelon was turned over to his Coy. When I returned, I discovered that he had not been on the authorized leave party of which I was in charge."

C.J. Jeffrey.

(C.J. JEFFREY) Lt
THE ESSEX SCOTTISH REGIMENT.

Exhibit "X"

Summary of Evidence in the case of D-158002 Pte George Ryan. 1st Bn The Essex Scottish Regt. a Soldier of the Canadian Army Overseas

The accused is informed of his rights.

The I.O. directs that the evidence be taken on oath.

First witness for the prosecution: A-103385 a/Sgt Salisbury I.S. 1st Bn The Essex Scottish Regt:

A written statement of this witness' evidence, purporting to be signed by him has been read to the accused and is included in this summary (attached as Exhibit "A") Having regard to the loss of time involved the attendance of this witness cannot in my opinion be readily procured.

The accused does not demand the attendance of this witness for cross-examination.

R.W. Manwell a/Capt
Officer detailed to take the summary

Second witness for the prosecution: Lt. C.J. Jeffrey, "D" Coy, 1st Bn The Essex Scottish Regt:

A written statement of this witness evidence, purporting to be signed by him has been read to the accused and is included in this summary (attached as Exhibit "B") Having regard to the loss of time involved, the attendance of this witness cannot in my opinion be readily procured.

The accused does not demand the attendance of this witness for cross-examination

R.W. Manwell a/Capt
Officer detailed to take the summary

The accused having been duly cautioned in accordance with R.P. 44(E) says:
"NO. Sir." R P Gore

The accused does not wish to call witnesses in his defence at this point.

Certified that R.P. 44 complied with.
In the field
22 Jan 15

R.B. Meanwell A/Capt
Officer detailed to take the Summary

"I wish the services of a defending Officer to be detailed by the Adjutant"
R P Gore

In the field
22 Jan 15.

EXHIBIT "B".

STATEMENT OF EVIDENCE IN THE CASE OF

D158002 PTE RYAN G

"I am Lt CJ Jeffrey of "D" Coy, The Essex Scottish Regiment. I had been detailed as offr IC leave party proceeding to Brussels. On 18 JAN 45 at about 1400 hrs, I listed the names of those personnel present at the RV in Brussels for the return trip to the unit. I took the name of a soldier who identified himself to me as D158002 Pte Ryan, G. He came back to the unit with our transport and on arrival at "A" Echelon was turned over to his Coy. When I returned, I discovered that he had not been on the authorized leave party of which I was in charge."

C Jeffrey.

(C.J. JEFFREY) Lt
THE ESSEX SCOTTISH REGIMENT.

EXHIBIT "A"

I am A103385 A/Sgt Salisbury VS of 18 pl 'D' Coy of the Essex Scottish Regt. I took a roll call of my pl at 1300 hrs 8 Jan 45 and found D158002 Pte Ryan G who is a member of my platoon to be absent. I made a complete search of the billet and area and could not locate him. I have not seen Pte Ryan since that time and to the best of my knowledge he is still absent.

Sgt. Salisbury V.S.

In the field
8 Jan 45

A103385 A/Sgt Salisbury VS
18 Pl 'D' Coy
Essex Scottish Regiment

No. D158002 Name RYAN George | Sqn., Battery, or Company | Corps CIC | Date of enlistment 7 Sep 43 | G.C. Badges | Service or Proficiency Pay | M.F.M. (A.F.B. 122)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. one | Signature O.C. Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Dundurn Sask		Tpr		SHEET ONE DESTROYED 6 MONTHS CERTIFIED NO [illegible]L ENTRIES			Sgd WC McWorth Maj OC TSS Win: A 27 Cdn Recce TC		
						7 Mar 44			
Field	14Jun44	Tpr		AA 40 Neglect etc. on bnt inspection had dirty rifle	L/Cpl Allred	2 dys C.B.		Maj Garen	
Field	2Nov44	Pte		AWL from 2300 hrs 2 NOV to 2345 hrs 5 Nov 44 (3 dys 45 min) AA 15(1)	L/C Scottie	20 dys forf	7 Nov 44	LtCol JEC Pangman	forf 24 dys pay

Certified true copy
22 Jan 45 R.W. Meanwell a/Capt a/adjt.
Officer having custody of original

P.T.O.

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED. EX "Z"

D-158007 Pte. George Ryan of the 1/4th Bn Essex Scottish Regt.

1. The following is a fair and true summary of the entries in the Regimental and Company Conduct Sheets of the accused, exclusive of convictions by a Court Martial or a civil Court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with:-

	Within last 12 months	Since Enlistment
For Absence without leave	one time	one time
For neglect	one time	one time
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct,

or,

There are no entries in the Conduct Sheets of the accused.

2. The accused has not been previously convicted,

or,

Previous convictions of the accused by a Court Martial or a civil Court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time,

or,

The accused at the present time is under sentence of .....

.....beginning on the.....day of.....

nil

7 7

nil

29 May 1924

20 yrs 7 mos 27 days

6. The date of his ~~commission~~ attestation specified in his record of service is 7/Sept 43

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 yr 4 mos 14 days

8. The accused is entitled to deferred pay or gratuity in respect of 1 yr 4 mos 14 days years service.

9. The accused is entitled to reckon 1 yr 4 mos 14 days years' service for the purpose of determining his pension, etc.

10. The accused is in possession of or entitled to ~~his military reward for~~ is in possession of or entitled to CVSM and clasp.

~~11. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~

12. (In the case of an officer.) The accused holds in the army the rank of , dated , and in his regiment (or corps or department) the rank of , dated

13. The accused has served as a non-commissioned officer continuously without reduction, to the present date,

In the rank of , Date of promotion

~~In the rank of , years,~~

~~In the rank of , years,~~

(Instruction.---If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the President, and annexed to the proceedings.

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT, OR SUMMARY AWARDS UNDER SECTION 47 OF THE ARMY ACT WHICH TRIAL WAS DISPENSED WITH.

Army Number, Rank and Name D-158002 Pte. Cooper, Ivan ..... of the 1st Bn. Essex Regt. R.

Note:- A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.

Description of Court by which tried, or status of Offr disposing of the charge or dispensing with trial	Date and Place of Trial, or summary award, or of Order dispensing with Trial	Charge upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
		Nil		

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

SIGNED this 26 day of Jan 45 A/Major Capt.

(A.F. B. 296)

RR-148 (ITALY)
PTE RYAN H.J.

Correspondence to be PINNED here.

RR-148

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

Canadian Section G.H.Q. 2nd Echn.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twenty-Eighth day of September, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~and that it is not practicable to delay the trial for reference to superior military authority~~

*Omit where Convening Officer is a Commanding Officer not below the rank of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*One of not appointed.

~~I am unable to appoint~~

~~Three Officers to form the Court~~

~~A Field Officer as President~~

~~for the following reasons, namely~~

Lt-Col Graham D.S.O. 25 Oct 43

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong only above be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	E.A.A. Doiron	R 22e R

Members.

Rank.	Name.	Regiment.
Capt	G. Gauvreau	R 22e R
Lieut	D.R. Sharpe	Carlt & York R
Lieut	E.D. Hersey	Fest NSR
Waiting		

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brigadier,

Commanding 3 Cdn Inf Bde.

Convening Officer.

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
F29594 Pte RYAN, Herbert James, West NSR	1st Charge Sec 19 A.A.	Guilty	Guilty	Confirmed
	2nd Charge Sec 8(2) A.A.	Not guilty	Guilty	Confirmed
	3rd Charge Sec 9(2) A.A.	Guilty	Guilty → Not confirmed 30 Sep 43	
	4th Charge Sec 9(1) A.A.	~~Guilty~~ Not guilty	Not guilty To undergo six (6) months detention E A Davison Major President	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) —

"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"

Answer (*to be recorded on separate sheet if necessary*) —

(Signed) [illegible] Brigadier (Signed) E A Davison Major

Commanding 3 Cdn Inf Bde
Convening Officer (*e*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 29 th day of September 43 and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~)
*(4. The officers under instruction)

were duly sworn.

*Omit if not applicable.

Signed this 29 th day of September 1943

Eddaisson Capt
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 702 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this ~~day of~~ 19 .

~~*President of the Court Martial.*~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless prior sanction (in proper cases) of confirming officer having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

Signed this 30 th day of September 1943.

W H Stenhalz Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) 1 Oct 43 (Signed) C B Higgin Capt
West Nova Scotia Regiment

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(23573) (24256) Gp.A88

Page 2

CHARGE SHEET

F29594 Pte Herbert James RYAN, West Nova Scotia Regiment, a soldier of the Canadian Army Overseas, stationed in the Field, on Active Service, is charged with:

1st CHARGE
Sec 19
Army Act.

While on Active Service, DRUNKENNESS,

in that he,

in the Field, while on duty in POTENZA, as a member of "D" Coy picquet, at approx 1300 hrs was drunk.

24 Sep 43

2nd CHARGE
Sec 8 (2)
Army Act.

While on Active Service, USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER,

in that he,

in the Field, at POTENZA, on 24 Sep 43, at approx 1300 hrs, when ordered by Lt. S.F. Williams to go into the Guard Room, said, "Fuck you Mr Williams".

3rd CHARGE
Sec 9 (2)
Army Act.

While on Active Service, DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER,

in that he,

in the Field, on 25 Sep 43 at approx 1430 hrs, while on Staff Parade, after being ordered by Lt.-col. M.P. Bogert to be quiet until he was asked to speak, said, "You can shoot me right now if you like" or words to that effect.

4th CHARGE
Sec 9 (1)
Army Act.

While on Active Service, DISOBEYING IN SUCH A MANNER AS TO SHOW WILFUL DEFIANCE OF AUTHORITY, A LAWFUL COMMAND GIVEN PERSONALLY BY HIS SUPERIOR OFFICER IN THE EXECUTION OF HIS DUTY,

in that he,

in the Field, on 24 Sep 43, at approx 1300 hrs, at POTENZA when ordered by Lt. S.F. Williams to go into the Guard Room threw his revolver in the direction of Lt. S.F. Williams and said, "Come and get me, I'll fight fair".

In the Field
27 Sep 43.

(M.P. Bogert), Lt.-col.,
Comd. West N.S.R.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
28 Sep 43

(M.H.S. Penhale), Brigadier,
Commanding 3 Cdn Inf Bde.

Edwin Leger
President.

F. 29594 Pte Ryan N.V., W.V.S.R. 29 Sept 43
was examined by me today & is fit to
undergo trial by court-martial.

J. I. Fletcher
Capt RAMC

Edwards Major
President

Accused F 29594 Pte Herbert James Ryan West Nova Scotia Regiment
(No.) (Rank) (Christian Names) (Surname) (Unit)

Held in the Field in Italy (Country) on 29 Feb 44 (Date)

	Rank	Name	Unit
PRESIDENT:	Major	E.A.A. Dixon	R.22eR
MEMBERS:	Capt	G. Laurence	R.22eR
	Lieut	D.R. Cooper	Perth York R

JUDGE ADVOCATE:
(if any)

OFFICERS UNDER INSTRUCTION: Lieut E.D. Hersey

PROSECUTING OFFICER: Capt D. Mac G. Archibald Lawyer? Ans Yes

DEFENDING OFFICER: Lieut H.L. Christie Lawyer? Ans Yes

(The following procedure must be actually carried out)

The President produced the Convening Order, Charge Sheet(s) and Summary of Evidence. (RsP 17(B), 22(A)).

The President, in closed court (RP 22, fn 1), reads the Convening Order and the Charge Sheet(s) to the Members, and the Court satisfy themselves that it is properly convened (AA 49; RP 105) and constituted, that the accused is (are) amenable to Military Law, and that each charge discloses an offence. (RP 106).

The accused is (are) brought before the Court, and at 1400 hrs, the trial commences.

The Prosecuting Officer produces a Medical Certificate under MR (Can) 557 (See CMHQ Circular Letter 173) that the accused is (are) fit to undergo trial by Court Martial. The certificate is initialled by the President and attached to the Proceedings.

President to accused: Do you object to N/A as interpreter? Ans

The interpreter is duly sworn.

Do you object to N/A as Shorthand Writer? Ans

The Shorthand Writer is duly sworn. (Forms of Oath on Page 'D')
The Convening Order is read in the hearing of the accused.
The names of the President and Members of the Court are read to the accused (RP 10)

President to accused
Do you object to be tried by me as President or by any of the Officers whose names you have heard read over? Ans No

The President, Members, Judge Advocate and Officers under Instruction are duly sworn (RP 26-27 (Forms of Oath on Page 'D'))

The Charge Sheet(s) is (are) initialled by the President.

The Prosecuting Officer informs the Court that the accused has (has not) elected trial by Court Martial (AA 46(8)).

(If special plea/s is/are made for separate trial on one or more charges (RsP 62(E), 108); or as to the jurisdiction of the Court (RP 34); or in bar of trial (RP 36); or as to accused's mental fitness to stand trial (AA 130, RP 57), record such pleas and evidence (if any) on separate sheet/s to be initialled by the President and attached to the proceedings.

Each Charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (RP 112). He pleads as follows:

First Charge Guilty
Second Charge Not guilty
Third Charge Guilty
Fourth Charge Not guilty
Fifth Charge
Sixth Charge
Seventh Charge
Eighth Charge

(For procedure on alternative charges, see RP 37, fn 2)

Further proceedings are recorded on pages hereto attached.

Edward Keogh
President

PAGE 'C'

(For use when there are pleas of 'Guilty' and 'Not Guilty')

(All printed matter not applicable to be struck out an all alterations, erasures and additions to be initialled by the President)

1. RP 35(B) is complied with, in respect to 'Guilty' pleas, by the President ascertaining that the accused understands the nature of the charges(s) (fn 3) and his plea thereto, explaining the difference in procedure by the plea (RP 37(B)) and advising him to withdraw his plea if he thinks the accused ought to plead 'Not Guilty' thereto.

2. President to accused:
Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with and that you have been prejudiced thereby or that you have not had sufficient time for preparing your defence? (RP 39(A)).
Ans Nil

3. The Prosecutor's opening address (if any) (RP 39(B) and the evidence for the Prosecution are recorded on separate sheets, initialled by the President and attached hereto. (See RECORD OF EVIDENCE on Page 'D').

4. The Prosecution is closed. (If submission that no prima facie case established, see RP 40 fn 1; RP 70 fn 1).

5. The accused is informed that he may, if he wishes, give evidence, but if he does so, he will be liable to cross-examination. (RP 40, fn 2) or that he may, if he wishes make an unsworn statement upon which he can not be cross-examined. (RP 40(D)(ii)(a)).

6. President to accused:
Q. Do you apply to give evidence yourself as a witness? Ans No
Q. Do you intend to call any other witnesses in your defence? Ans Yes
Q. Is he a witness as to character only? (RP 40(B)) Ans Nil

7. The evidence for the defence (if any) is recorded on separate sheets, initialled by the President and attached hereto.

8. The closing addresses of the Prosecutor, Defending Officer and Judge-Advocate (if any) are recorded on separate sheets, initialled by the President and attached hereto. (For order of addresses, see RsP 40, 41 and 42).

9. The Court is now closed to consider the finding. (RsP 43 and 117). (Record Finding on page 2 of AFA.3).

10. The Court being re-opened, the accused is again brought before it and the findings of 'Not Guilty' (if any) are pronounced. (RP 117(B)). on fourth charge. Each

11. The charges, to which the accused pleaded 'Guilty' are read to the accused.

12. President to accused:
Q. Do you desire to make any statement of the circumstances in reference to the charge(s) to which you have pleaded 'Guilty'? (RP 37(B)) Ans Yes

(Statement (if any) not on oath is recorded on separate sheet, initialled by the President and attached hereto. Accused is not subject to cross-examination thereon).

13. Summary of Evidence is read aloud in the presence of the accused, initialled by the President and attached to the proceedings. (If not such Summary, it is necessary for determination of sentence

(cont'd)

that sufficient evidence be taken and recorded on separate sheet, initialled by the President and attached to the proceedings). RP 37(B).

14. President to accused:
Q. Do you wish to make any statement in mitigation of punishment? (RP 37(C)) Ans Nil
No cross-examination.
(Statement (if any) is recorded on separate sheet, initialled by the President and attached hereto).

15. President to accused:
Q. Do you wish to give evidence yourself or call witnesses as to character? (RP 37(C)) Ans Nil

16. Statement of Character and Service (AFB.296) and Field Conduct Sheet (CFH.6), signed in the manner required by AA 163 (i) (h) and purporting to refer to the accused by his number (if any), rank, name and Corps, are produced to the Court, read, marked "A", and "B", initialled by the President and attached to the proceedings. (RP 46; Oversees RO 3131).

17. President to accused:
Q. Do you wish to address the Court on the Statements of Character, Service and Conduct in mitigation of punishment? (RP 46(D)).
Ans Nil No cross-examination.

(Record address (if any) on separate sheet, initialled by the President and attached hereto).

18. The Court is now closed to consider the sentence. (Record on Page 2 of AFA.3).

(Punishments AA 44; MR (Can) 563 - 566; one sentence only awarded, RP 48. Sentence should be dated).

The sentence is not announced to the accused by the Court.

Eddy Dixon Major
(Signature of President)

Opening address
by Prosecution

In attempting
prove the 2nd & 4th charges I
shall call two witnesses only, both
of whom will give evidence as to the
behaviour of the accused in Potenza
on 24 Sep 43, which behaviour constitutes
an offence under Sec 8(1) AA, Ord 9(1) 42.

Gadwiram Major
President

Prosecution Witness

Lieut S.T. Williams RD Coy WNSR being duly sworn states: I am Lieut S.T. Williams RD Coy WNSR. RD Coy WNSR supplied a picquet to police the Town of Poteya from 1800 hrs 23 Sep 43 until 0800 hrs 25 Sep 43. I was O.C. of that picquet. Pte Ryan WJ was a member of that picquet. On the morning of the 24th Sep 43 I left the picquet in charge and they were made up into relays. Pte Ryan's relay was to go on duty at 1000 hrs 24 Sep 43. At about 0830 hrs I spoke to Pte Ryan, he had been drinking, but was not drunk. I told him to go get washed shaved & cleaned up ready for his turn of duty at 1000 hrs. At 1000 hrs 24 Sep 43 Pte Ryan was not available for his turn of duty. Another man was detailed to take his place. Later that day I saw Pte Ryan WJ. It was shortly after dinner in front of the building we were using as guard headquarters & he was very drunk. His rifle was slung on his shoulder & he was staggering in the centre of the road. I detailed one N.C.O. & 2 men to place him in the guard room under close arrest. They went up to him & he would not give up his rifle. They tried to take it from him by force. Pte Ryan was using foul language during all this time he was then brought into a corridor of the building in which the guard room was. He still retained his rifle. I was standing in the corridor & I said to him "go into the guard room." He said "F--- off you MOB W Bluin."

Chairman Prosecution
President

his rifle was taken from him then he was
he then backed down the corridor about
15 ft. & then told the N.C.O. to take 3 men
if necessary but not to get Pte Ryan out
into the guardroom. At that time he
took from his pocket a Beretta revolver
which he threw up the corridor &
said, 'Come & get me, all right fair.'
I stopped the revolver with my foot. Pte
Abbott T.E., one of the men detailed by
the N.C.O. to help place Pte Ryan in the
guard room then went up to him and
took the Ryan down the corridor two men
then helped hold his feet & he was carried
still struggling, & still using foul profane
language into the guardroom. I ordered
him tied so as to prevent any further
fighting. He was tied & left alone on the
floor in the guardroom. While awaiting
the truck to remove him to his Coy area
loud & profane language could be
heard coming from Pte Ryan cell in the
guard room. When the truck arrived he was
placed in it & taken to his Coy
area under escort.

The defence declines to cross-examine the witness.

2nd witness for prosecution

Capt Rogers, A.W. D Coy W.N.S.R.
being duly sworn states: I am Capt
A.W. Rogers O.C. D Coy W.N.S.R. About
noon on the 23 Sept 43 I received orders
from the O.C. the supply a sergeant &
two platoons to police the town of
Potenza beginning 1830 hrs that night.
I informed the company as a whole
that the sergeant would select
of the best turned out men in the Coy.
& that these men would be chosen at
a parade at 1700 hrs. At that time I
chose the men & instructed them in
their duties. The accused was one
of the men chosen.

Expression keeps President

The next time I saw the accused was shortly after dinner on the following day, when I saw him standing in the middle of the street outside the building used as guard H.Q. in a very drunken condition. I ordered Mr. Williams to have him taken to the guard room as he was unfit for duty, and was creating a scene in front of a large crowd of people in the street. The men detailed by Mr. Williams to take him to the guard room could not get him to give up his rifle so I talked & reasoned with him in company with Mr. Williams & he finally after telling Mr Williams 'Fuck you, Mr. Williams', threw his rifle on the floor of the corridor. Following this he kicked down the corridor & threw an Elaion revolver in the direction of Mr. Williams & myself & yelled something about "fighting spain". I believe "I'll fight spain" was part of it. Then one of the men detailed by Mr. Williams tackled the accused & threw him to the floor from where he was carried by them into the guard room, where he was tied up to prevent any further acts of violence. He continued using loud & obscene language which could be heard outside in the street until he was taken back to his Coy area under close escort.

The defence declines to cross examine the witnesses

Commission adjourns
President

Closing Address of the accused in standing for prosecution Trial on Two charges - 2nd & 4th charge as detailed on the charge sheet. The facts presented to the court in the prosecutions case are first: That the accused said when ordered by Lieut. Williams to go into the guard room "Fuck you, Mr. Williams." Both witnesses are clear on this point. Secondly with regard to the 4th charge on the charge sheet both witnesses agree agree that the accused when ordered to go into the guard room by Lieut Williams threw a revolver in Lieut Williams direction & made some comment which according to the evidence of one witness was "Come and get me, its fight now." These are the facts necessary to substantiate the Two charges & they are adequately proven by the evidence of both witness

Broadwaison Major
President

Pl Coun addresses — Sir, in asking the
Co Pl Coun court to bring in a verdict
of not guilty on the second &
fourth charge shown on the
charge sheet I wished refer the
court to Ch 3 of M.M.L Para 47
dealing with evidence as to circumstances
of drunkenness. Since the accused
has pleaded guilty to the charge of
drunkenness & since both witnesses
testify that the accused was very
drunk it is proven that since the
charge arose from the fact that the
accused was drunk.

Edwin Major
President

Statement by Accused

F 22597 Pte Ryan W.J. Wales

It was morning of the 24th that Mrs. Williams told me that I'd be on patrol duty 1200 hrs. She informed me to go and wash and shave and not to drink any more. I did as I was told. I went to have a wash and shave and from then on I have no recollection of what happened until I woke up in my tent sometime the next day.

Major

Gadwaison
President

Statement by accused in his unit Reference to 3rd Charge

F29.191 Pt Ryan W.J. - Statement - Sir, on the 25th Sep 48 I was warned for staff parade. I was very nervous that morning due to the fact that I had been drinking a lot the day before. I am not used to drinking wine. I think sir, if I had been right or in a normal condition that I wouldn't have broken in the way I did on staff parade.

Edward Major
President

Statement by Chief Off. — I will give you
in Mitigation of briefly the accused record
Punishment
of service. He has been in the
army exactly four years he came overseas
with the first reinforcement draft & the
unit & has been with this unit ever since
During this time according to his conduct
sheet he has been a well behaved soldier
all but the count I consider in passing
sentence that the man was drunk
& on the third charge was evidently
suffering badly from the after effects
of his drinking the day before. Had it not
been for this I am sure he would not
have behaved as he did.

Major
President

Cordova Alaska [illegible]

of Accused [illegible] Lieut H. L. McFee

being duly sworn states: I have known the accused personally since taking over command of No 18 or D Coy WNWR on 23 Aug 43. Up until the time we were in Potenga on guard duty the accused had never given any trouble in the station and I thought him to be a good soldier.

Cordova Alaska Major
President

SUMMARY OF EVIDENCE in the case of F29594 Pte Herbert James RYAN, West Nova Scotia Regiment, a soldier of the Canadian Army Overseas, stationed in the Field, on Active Service.

By Order of Lt.-col. M.P. Bogert, Officer Commanding, West Nova Scotia Regiment.

Evidence taken on Oath.

First Witness
for Prosecution.

Lt. S.F. Williams, West Nova Scotia Regiment, having been duly sworn states:

"I was O.C. of the Town Picquet supplied by "D" Coy, West N.S.R. for the town of Potenza from 1830 hrs 23 Sep 43 until 0800 hrs 25 Sep 43. Pte Ryan was on this picquet. On the 24 Sep 43 I had two street patrols which worked in relays. Pte Ryan was on the relay that went on duty at 1000 hrs. At about 0815 hrs I noticed Pte Ryan had been drinking, he was not drunk and was then capable of performing his duties. I told him that if he drank anymore he would be unfit for duty and would get into trouble. I warned him that his relay went on at 1000 hrs and to go and get shaved and cleaned so as to be ready for that time. Cpl Smith G.G., NCO i/c of the relay reported to me at 1000 hrs that Pte Ryan was absent. I then instructed him (Cpl Smith) to replace Ryan with another man who was standing by at Guard HQ. Shortly after dinner Pte Ryan appeared in front of the Guard room very drunk, he had his rifle with him. I detailed one NCO and two men to place him in the guard room under close arrest. He would not give up his rifle and a scene arose in which obscene and loud language was used by him. He was finally brought into the hallway of Guard HQ but still retained his rifle. His rifle was then taken from him by force. I then said,"Ryan go into the Guard room", he said "Fuck you Mr Williams", I told the NCO to take three men if necessary and get Ryan in the Guard room. He then used more obscene language and threw a small revolver, which he had in his pocket and had not been discovered, up the hallway where I stopped it with my feet and he said, "Come and get me I'll fight fair" or words to that effect. Pte Abbot, L.E. went up to him and threw him on the floor. He was carried into the Guard room by force. He continued using obscene language and trying to fight all the time. I ordered him tied to prevent any further fighting, his hands and feet were tied. He was left on the floor in the Guard room, while awaiting the truck to remove him to his Coy Area, he used loud and obscene language which could be hear out in the streets. When the vehicle arrived he was returned to the Coy area under close arrest.

Signed: S.F. Williams Lieut

The accused declines to cross-examine this witness.

Second Witness
for Prosecution.

Capt. A.W. Rogers, West Nova Scotia Regiment, O.C. "D" Coy, having been duly sworn, states:

"At approx 1200 hrs 23 Sep 43 I received orders from BnHQ to provide a picquet of two Pl strength to police the town of Potenza at 1800 hrs the same date. I issued a warning order to the Coy as a whole that the picquet would be chosen at 1700 hrs from the Coy and only the best turned out would be chosen for this picquet. At 1700 hrs I chose the picquet and instructed them in their duties as members of this picquet. Pte Ryan was on this picquet. I then warned them to stand by for picquet duty at 1730 hrs. The next time I saw Pte Ryan was on the following day shortly after dinner when I saw him standing in

Read

...../2.

Second Witness
for Prosecution Cont'd.

front of the Guard HQ in a drunken condition. I ordered Lt. Williams to have him placed in the Guard room, as there were quite a few people on the street watching him, and he was totally unfit for duty. Men detailed by Mr Williams to escort him into the guard room could not persuade Ryan to give up his rifle. I talked and reasoned with him and finally threw his rifle on the floor. On being ordered by Mr Williams to go into the Guard room he said "Fuck you Mr Williams" and continued to use loud and profane language and to defy anyone to make him go into the guard room. He threw a small Italian revolver down the hallway towards the doorway where Mr Williams stopped it. Following this a member of the picquet tackled Ryan and threw him to the floor where he was carried to the guard room. I ordered him to be tied to prevent further trouble. He continued shouting and cursing while in the guard room until escorted back to his Coy area under close arrest.

Signed: A.A. Rogers Capt

The accused declines to cross-examine this witness.

Third Witness
for Prosecution.

F41556 RSM Dean, G.Stc., West Nova Scotia Regiment, having been duly sworn, states:

"Approx 1430 hrs 25 Sep 43 I marched the accused Pte Ryan before the Commanding Officer. During the period of Mr Williams giving evidence, Pte Ryan, said "Thats a lie". The Commanding Officer told him to be quiet and he still continued to talk and said, "Take me out and shoot me" or words to that effect. I then on the Commanding Officers'orders marched him off the parade.

Questioned by the accused as follows:

Q. Was I in a fit condition for Staff Parade?

A. You seemed a bit nervous otherwise OK.

[redacted].

Signed: G.T. Dean RSM

The accused declines to further cross-examine the witness.

Fourth Witness
for Prosecution.

Capt. C.B. Higgins, West Nova Scotia Regiment, having been duly sworn states:

"On 25 Sep 43 at approx 1430 hrs I was Adjt on Staff Parade held by Lt.-col. Bogert of the West N.S.R. Pte Ryan whom I now recognize was paraded before the Commanding Officer on charges laid by his Coy Comd. Lt Williams a witness on this case was giving evidence, when Pte Ryan broke in saying "That is not true". Pte Ryan was then ordered by Lt.col Bogert to keep quiet and not to speak until he was asked to speak. A minute or two later while Lt. Williams was still giving evidence Pte Ryan again broke in and said "You can shoot me right now if you like" or words to that effect. The Commanding Officer then ordered the RSM to march Pte Ryan off and additional charges laid.

Signed: C.B. Higgins Capt.

The accused declines to cross-examine this witness.

.....3

Second Witness
for Prosecution Cont'd.

front of the Guard HQ in a drunken condition. I ordered Lt. Williams to have him placed in the Guard room, as there were quite a few people on the street watching him, and he was totally unfit for duty. Men detailed by Mr Williams to escort him into the guard room could not persuade Ryan to give up his rifle. I talked and reasoned with him and finally threw his rifle on the floor. On being ordered by Mr Williams to go into the Guard room he said "Fuck you Mr Williams" and continued to use loud and profane language and to defy anyone to make him go into the guard room. He threw a small Italian revolver down the hallway towards the doorway where Mr Williams stopped it. Following this a member of the picquet tackled Ryan and threw him to the floor where he was carried to the guard room. I ordered him to be tied to prevent further trouble. He continued shouting and cursing while in the guard room until escorted back to his Coy area under close arrest.

Signed: A W. Rogers Capt

The accused declines to cross-examine this witness.

Third Witness
for Prosecution.

F41556 RSM Dean, G.Stc., West Nova Scotia Regiment, having been duly sworn, states:

"Approx 1430 hrs 25 Sep 43 I marched the accused Pte Ryan before the Commanding Officer. During the period of Mr Williams giving evidence, Pte Ryan, said "Thats a lie". The Commanding Officer told him to be quiet and he still continued to talk and said, "Take me out and shoot me" or words to that effect. I then on the Commanding Officers'orders marched him off the parade.

Questioned by the accused as follows:

Q. Was I in a fit condition for Staff Parade?

A. You seemed a bit nervous otherwise OK.

[redacted].

Signed: G.S.C. Dean. RSM

The accused declines to further cross-examine the witness.

Fourth Witness
for Prosecution.

Capt. C.B. Higgins, West Nova Scotia Regiment, having been duly sworn states:

"On 25 Sep 43 at approx 1430 hrs I was Adjt on Staff Parade held by Lt.-col. Bogert of the West N.S.R. Pte Ryan whom I now recognize was paraded before the Commanding Officer on charges laid by his Coy Comd. Lt Williams a witness on this case was giving evidence, when Pte Ryan broke in saying "That is not true". Pte Ryan was then ordered by Lt.col Bogert to keep quiet and not to speak until he was asked to speak. A minute or two later while Lt. Williams was still giving evidence Pte Ryan again broke in and said "You can shoot me right now if you like" or words to that effect. The Commanding Officer then ordered the RSM to march Pte Ryan off and additional charges laid.

Signed: C.B. Higgins Capt.

The accused declines to cross-examine this witness.

...../3

Pages 17

The accused having duly cautioned in accordance with RP 4 (e) reserves his defence.

Certified that Rule of Procedure 4 (c) (d) (d) & (f) have been complied with.

Taken down by me in the presence and hearing of the accused this 26th day of September 1943.

In the Field
26 Sep 43.

(D.McG. Archibald), Capt.,
Officer taking Summary.

Good

No. F29594 Name RYAN, H.J. | Sqn., Battery, or Company | Corps C.I.C. | Date of enlistment 20-9-39 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 122) 40/P.& S/136 (2687)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				TEMPORARY SHEET Original not available, lost due to enemy action.					
Field	5 Aug 43	Pte		Sec 15 (1) A.A. AWL from 2359 hrs 5 Aug to 0730 hrs 6 Aug 43.	L/C Risner	7 days C.B.	6 Aug 43	Major Thompson.	Forfeits 1 days pay 149 (1) (a)

Certified true copy of temporary sheet ..... Capt.
Offr i/c Regt'l Records, West N.S.R.

(P.T.O.)

F29594 Pte Ryan, H.J.

Original MFM 6 lost due to enemy action, temporary sheet only, available

Sec 15 (1) A.A.	1 times	Sec 15 (1) A.A.	1 times

Original MFM 6 lost due to enemy action, temporary sheet only, available.

No Court Martial entries.

27 th September

Edward Keegan
President

C.B. Higgins Capt.
Offr. i/c Regt. Records
West N.S.R.

List of Witnesses in the case of: F29594 Pte RYAN, H.J.
West Nova Scotia Regiment.

PROSECUTION : 1. Lt. S.F. Williams, West N.S.R.
2. Capt. A.W. Rogers, West N.S.R.
3. F41556 RSM Dean, G.Stg. West N.S.R.
4. Capt. C.B. Higgins, West N.S.R.

DEFENCE : NIL

LIST OF EXHIBITS : NIL

Statement by the accused as to a defending officer.

If I am to be tried by Court Martial on charges now pending against me, I wish to have Lt McPhee West N.S.R. to act on my behalf.

In the Field
26 Sep 43.

H J Ryan
(Signature of Accused)

This is to certify that I, F29594 Pte Ryan, H.J.
have been given free of charge, a copy of the Summary of Evidence, Charge Sheet, documents, etc., relative to my trial by Court Martial.

In the Field
26 Sep 43.

H J Ryan
(Signature of Accused).

5-P-9

Re: Ryan, J.

5 P-9

The Ryan, J.

RECORDED AT CMHQ IN AB 160 5P-9

FIELD GENERAL COURT-MARTIAL

CFA96 (To lieu of AFA81) 40/P & B/1098 (6144) 4/38B

Convened by Order of Colonel J A Wilson ED Comd 13 CITB dated 10 Jul 45

ACCUSED.

(Where the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number (a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-89434	Pte	J.	RYAN	CIC 5 CITR

RECEIVED 28 JUL 45 JAG BRANCH CMHQ

PROCEEDINGS REVIEWED 27 July 45 WMWS Capt. for Reviewing Officer, JAG Branch CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date) 12 JULY 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OF APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1215 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to~~ as interpreter? Ans

The Interpreter is sworn.(1) Do you object to D 2 3126 SGT A.H. SINCLAIR as shorthand writer? Ans NO

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	D.L. REDMAN	HQ CAV
Member	CAPT	H.R. COLE	3 CITR
Member	LT	A. TOUCAS	4 CITR
~~Judge Advocate~~	{CAPT FROM 5 CITR NOT BEING AVAILABLE WAITING MEMBER TAKES HIS PLACE.		
Prosecutor	LT	C.N. DUBOSE	5 CITR
Defending Offr	LT	F.E. STEPHEN	5 CITR

Questions by President: Is the Prosecutor a lawyer? Ans A.D. Is the Defending Offr a lawyer? Ans NO(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s). If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO SIR.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement(s). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A" initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets & Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. Do you intend to call witnesses on your behalf ?
Ans. Are they witnesses as to character only ? Ans.
(*1. RP 115. 2. RP 40(A), see 80(B). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(B). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO SIR.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. NO SIR. EXCEPT
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(AL, KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F-89484 Pte J. RYAN - CIC - 5 CITR

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 8 (2)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence~~ for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which NIL days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
To undergo detention for a period of
six (6) Months.

(Sgd) ..... Judge-Advocate, if any. 12 JUL/45 Date awarded. (Sgd) [signature] President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) Jan
(1. AA 57A. Delete if not used.)

Date 14 Jul 45 (Sgd) [signature] Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
F 89484 Pte J RYAN	16 July 1945	[signature]

Part II D.O. 169 dated 19 Jul 45.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CHARGE SHEET

The accused, No F. 89484, Private RYAN, J., Canadian Infantry Corps, 5 Canadian Infantry Training Regiment, C.A.C., is charged with:

CHARGE
Sec.8(2)
Army Act

WHEN ON ACTIVE SERVICE STRIKING HIS SUPERIOR OFFICER

in that he, in the Sgts. Mess at 5 Can. Inf. Depot Bn. of 5 C.I.T.R. in the Field about 0030 hrs on 1st July, 1945 struck with his fist in the face, No A. 34093, C.S.M. A/ R.S.M. Harper, H., of 5 C.I.D.B. of 5 C.I.T.R.

Col

(J.D. PORIN) Colonel
Officer Commanding
5 Canadian Infantry
Training Regiment

In the Field,
6th July, 1945.

To be tried by Field General Court Martial.

(J A Wilson) Col
Temporary Comd
13 Cdn Inf Trg Bde

IN THE FIELD
10 Jul 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his command or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-89484	Pte		J.	RYAN	CIC 5 CITR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence set forth in the Charge Sheet attached and on (*date*) 10 Jul 45 endorsed by me, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence should be tried by an ordinary General Court-Martial; (and that it is not desirable that such offence should be tried by a Field General Court-Martial.)
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

4. [redacted]
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. [redacted]
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

LT COL (Rank.)	D L REDMAN, VD (*Must be named. RP 106.*)	HQ CRU (Unit.)

MEMBERS.

Captain (Rank.)	to be detailed by Comd (*Named or detailed. RP 106.*)	5 CITR (Unit.)
Lieutenant (Rank.)	to be detailed by Comd (*Named or detailed. RP 106.*)	4 CITR (Unit.)

WAITING MEMBER.

Captain (Rank.)	to be detailed by Comd (*Named or detailed, if any. RP 106.*)	3 CITR (Unit.)
[redacted] (Rank.)	(*Must be named, if any. RP 106.*)	(Unit.)

On Active Service in the Fd

in (*Country.*)

(*Signed personally. RP 105 fn 2.*) Colonel (Rank.)

(J A Wilson)

Date 10 Jul 45 Temporary Commanding 13 Cdn Inf Trg Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CPASS (In Duplicate of AFA3) 40-P & S-1697 (4801)

(*See overleaf for oaths and notes for use on trial.*)

MEDICAL OFFICER'S CERTIFICATE

July 12th, 1945.

I certify that No. P. 89484, Private RYAN, J., CIC,
5 Canadian Infantry Training Regiment is in state
of health and is fit to undergo trial by Court Martial.

S H Soby
.....Capt.
RCAMC att'd 5 C.I.T.R.

PLEA OF MITIGATION

I submit a plea of mitigation in the case of F89484, Pte Ryan J.

Pte Ryan joined the army on the 1st of August 1941, and from that date he had been undergoing training in various places and forms as most soldiers usually do. When he arrived overseas he came as a reinforcement for the Cape Breton Highlanders, joining the same unit on the 31st January 1943. He served with this unit in action for a period not less than 13 months, at the end of this time he was wounded and sent to hospital and thus back to England.

What I have just stated is the outline of this man's career in the army--but I am concerned, and I hope the court will feel the same way--that this man, F89484 Pte Ryan J., is perhaps a victim of events; what I mean by that is-- that Ryan, who has had 13 months of action and when doing so served in my platoon for quite some time - his conduct as a fighting man and soldier was unquestionable. A morale builder to the men and myself, and never once shirking the unpleasant jobs that are very numerous when in action against the enemy.

I believe most of us know that some men are very adept when they are doing a job of work, as I have just mentioned, and perhaps on the other hand I may state that they do not make excellant barrack soldiers. After being so many months in action in the field that life and its problems seem totally different to us. And it takes one month to get back to the life in barracks again, especially after coming out of hospital with severe wounds that perhaps have healed physically, but there would be a great mental change in a soldier's life.

As I have stated, the mental adjustment might, and must have had a bearing on the Pte Ryan's actions, perhaps a climax to preceding events, as Ryan told me his family life has been disturbed. His father is dead, and his mother is very ill. Ryan tried to return to Canada on compassionate grounds. He received a certificate from his family doctor, and one from the family priest. While in "Con" Hospital at #4 CCD he turned them over to the RC Padre at #4 CCD and since that time, the 22nd of March, he has not heard anything concerning his case.

Now--I ask you. Wouldn't things like this tend to make a man disgruntled and perhaps more or less a bit careless of his position. He has tried, and really made a broad attempt until he was introduced to #5 CITR and certain parties at this training regiment--who I may add know nothing of man management--but only the way of the whip, and this I can say in all sincerity is not the method of handling men.

Therefore, I ask that this man, F89484 Pte Ryan J be treated and dealt with in such a manner that he will be able to come out of this with a clearer view point on Army life. This punishment should not be a sentence given to an incorrigable character, because the man is not a soldier who has the army licked. He needs guidance and help from those in command, not abuse and non-interest.

Ex 3

Lt. P.E. Stephen
Defending Officer

16 Jul 45

C.O. 13 CITBde.
C.O. 5 CITR.

Sir -

In regard to a statement in a Field General Court Martial on a Pte. F89484, Ryan, J., whom I was defending, I made a statement which referred to the Unit and was detrimental to the Office of the Commanding Officer of 5 CITR. I wish to tender an explanation and apology.

During the hearing and the plea of mitigation, which I submitted on behalf of F 89484 Pte Ryan, J., I said things which I duly regret. Perhaps this being my first defending case, and this man, who once served in my platoon in action, I felt that I should try my utmost to have a light sentence passed on him. Apparently while doing so I was thinking more of Ryan and his position than I was of my own and therefore wrote without any head at all.

As I was informed of this I saw clearly that this statement I had made had no grounds whatsoever and during the case I said things that should never have been mentioned.

I sincerely hope that you will accept my apology and statement.

Your Most Obedient Servant,

F. E. Stephen Lieut.

(F.E. Stephen)Lieut.,
10 Trg Bn. 5 CITR.

SUMMARY OF EVIDENCE

In the case of No. F. 89484, Private RYAN, J., Canadian Infantry Corps, 5 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on Oath.

FIRST WITNESS:

No. A. 34093, C.S.M. A/R.S.M. HARPER, H., 5 C.I.T.R. having been duly sworn states:

About 0030 hrs 1 Jul 45 when I was closing the Sgts. Mess, 5 C.I.D.B. where I am A/R.S.M., the accused, whom I recognize and identify as No. F. 89484, Private Ryan, J., CIC, 5 C.I.D.B. of 5 C.I.T.R. approached me in the entrance porch to the said mess and asked for a drink of beer. He was dressed in uniform less battledress blouse and cap. I told him that he could not have any beer and to go to bed. I then added "Your name is Ryan and you are on C.B.". The accused immediately replied to me "No, my name is MacDonald". I left the porch but returned in a few minutes with two Sgts. to search for the accused. The accused had gone and could not be found. A few minutes later I noticed the accused standing in the corner of the same porch. The accused suddenly stepped into the mess room and in the full view of about 12 N.C.Os. and without warning violently struck me in the face several times with his clenched fist knocking me to the floor. I was perfectly sober though I had had a few drinks during that evening. I saw the accused about 20 minutes later when he was in arrest at which time on being informed by me of his charge he stated that he was going to make a fool of me because he was not the man who had hit me.

H Harper C.S.M. A/R.S.M.

The accused declined to cross-examine this witness.

SECOND WITNESS:

No. B. 45785, Sergeant HEDDLE, J.D., 5 C.I.T.R., having been duly sworn states:

About 0030 hrs 1 Jul 45 in the Sgts. Mess, 5 C.I.D.B. I saw the accused, whom I recognize and identify as No. F. 89484, Private Ryan, J., CIC, 5 C.I.D.B. of 5 C.I.T.R., suddenly step into the mess from the porch and without warning violently strike No. A. 34093, C.S.M. A/R.S.M. Harper, H., 5 C.I.D.B. of 5 C.I.T.R. in the face with his clenched fist, knocking him to the floor. I immediately grabbed the accused and pushed him into a corner of the porch where I turned him over to another N.C.O. while I helped C.S.M. A/R.S.M. Harper to his feet. When I turned back to the accused, he had escaped.

J. Heddle Sgt.

The accused declined to cross-examine this witness.

THIRD WITNESS: No. F. 43571, C.S.M. HANN, F.L., 5 C.I.T.R., having been duly sworn states:

About 0050 hrs 1 Jul 45 acting on instructions in the 5 C.I.D.B. lines, I searched the hut in which the accused, whom I recognize and identify as No. F. 89484, Private Ryan, J., CIC, 5 C.I.D.B. of 5 C.I.T.R., is quartered and found him in bed under the blankets but dressed in boots and battledress uniform but without his cap. I shook the accused who may have been asleep. I placed him in the unit barrack detention room where No. A. 34093, C.S.M. A/R.S.M. Harper identified him a few minutes later.

C.S.M.

The accused declined to cross-examine this witness.

Question to the accused:--

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer by accused:--

I have nothing to say.

The accused declined to call any witness for the defence.

I certify that Rules of Procedure 4 (C) (D) (E) and (F) have been complied with, and that the foregoing summary of evidence consisting of 2 pages was taken down by me in the presence of the accused on the 4th July, 1945.

Lt.

E.J. McCormick, Lt. 5 C.I.T.R.
Officer detailed to take the summary of evidence.

In the Field,
5th July, 1945.

EXA

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F 89484	Private	RYAN, J.	CIC, 5 C.I.T.R.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement and is not to be annexed to the proceedings. The numbers here in stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recorded special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.W.L. (15 (1) 8 times.

For Breaking out of Quarters (14(4) 1 times.

For A.A. Sec. 40 2 times.

For ..... times.

Date of first entry in Field Conduct Sheet 25 Sep 41

Date of last entry in Field Conduct Sheet 16 Mar 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*State not if not applicable.

*3. The accused at the present time is under sentence for .....

beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 12 days in military custody, *i.e.*, nil days in open arrest, 12 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 22 yrs., 3 months.

6. The date of his attestation is 1 Aug. 41

7. The service which the accused is allowed to reckon is .....

†State the military decorations (if any) held by accused.

8. The accused is in possession of† Can Vol Serv Medal and Clasp 1939 - 45 Star.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

Date of Promotion.

In the substantive rank of .....

In the war substantive rank of .....

In the acting rank of .....

EX 13

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*29072) Wt.30721/2701 32,000 9-44 A.& E.W.Ltd. Gp.698

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		Assaulting Police Officer at Bow Street Police Court.	2 months imprisonment with hard labour	

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 12 day of July 1945.

Regtl Adjutant 5 C.I.H.
Offr having custody of original rec.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
7 CIRU	27Mar43	Pte.		A.W.L. (A.A. 15(1))		Forf. 1 days pay Cost of appr.£0.2.8. & forf. 23 days pay			
				A.W.L. (A.A. 15(1)) 4 yrs, 15min. A.A. Sec. 40		22 days pay concurrent with sentence 22 Apr.43			
7 CIRU	14Jun43	"		A.W.L. (A.A. 15(1))		7 days F.P. & forf. 8 days pay			
C.B.H.	21Jul43	"		A.W.L. (A.A. 15(1))		7 days F.P. & forf. 1 days pay			
C.B.H.	17Aug43	"		A.A.40		21 days F.P., forf. 21 days pay			
7 CIRU	22Apr43	"		A.A. 15		28 days F.P., forf. 28 days pay			
7 CIRU	15Apr43	"		A.A. 15(1)		7 days F.P., forf. 9 days pay			
C.B.H.	18Mar44	"		A.A. 15(1)		14 days C.B., forf. 1 days pay			

Certified that this is a true copy of M.P.M. 6 as of 12 July 45 as compiled from M.F.M. 2

.....Lt.&Assistant Adjutant

Officer having custody of Regt'l Records.

M.F.M. 6
(A.F.B. 122)

No. F 89484 Name RYAN, J. Sqn., Battery, or Company | Corps | Date of enlistment | G.C. Badges | Tradesmen's Rates of Pay | Character

No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Temporary M.F.M. 6 compiled from M.F.M. 2					
Joliette	25Sep41	Pte.		A.W.L. (A.A. 15(1)		forf. 16 days pay 14 days Detn.			14 days pay 149 (1)(b) FR&L
Aldershot, N.S.	28Nov41	"		Breaking out of Quarters (AA 14(4)					
5 CIRU	18Jul42	"		- ? -		forf. 6 days pay			
5 CIRU	21Jul42	"		- ? -		forf. 6 days pay 3 days F.P.			Total Forf. 4 days pay
"	29"	42				Forf. 3 days pay Forf. 5 days pay			
5.CIRU	28Aug42	"		A.W.L. (A.A. 15(1)		21 days F.P.			Forf. 27 days pay FRI 149(1)a&b
C.B. High	6 Oct42					2 mons. Impt. H.L.			Forf. 89 days pay FRI 149(1)(B)
	13Feb43			Assaulting Police officer at Bow Street Police Court					

(continued over)

(P.T.O.)

I, No. F. 89484, Private RYAN, J., 5 Canadian Infantry Training Regiment, acknowledge that I have this day at 1440 hours been served with the following documents free of charge; (a) Copy of Summary of Evidence, and (b) Copy of Charge Sheet both in connection with my forthcoming trail by Field-General Court Martial.

In the Field,
6 July 1945.

J Ryan Pte.

I, No. F. 89484, Private RYAN, J., 5 Canadian Infantry Training Regiment, acknowledge that I have been informed that the convening officer may appoint or apply for the services of an officer holding legal qualifications to act as prosecutor at my trial by Field-General Court Martial and I have been advised of my rights to retain counsel. I do not intend to retain the services of counsel but desire to have a defending officer assigned to represent me at my said trial. I desire the services of Lt. F.B. Stephen, 5 C.I.T.R. if he is available for this purpose. I waive the 7 days notice mentioned in Rule of Procedure 89 (B).

In the Field,
6 July 1945.

J Ryan Pte.

LIST OF EXHIBITS

NIL

LIST OF WITNESSES

For the Prosecution

No. A. 54083, R.S.M. HARPER, H., CIC, 5 C.I.T.R.
No. B. 45785, Sergeant HEDDLE, J.D., CIC, 5 C.I.T.R.
No. F. 43571, C.S.M. HANN, F.L., CIC, 5 C.I.T.R.

For the Defence

NIL

STATE OF TRAINING OF ACCUSED

No. F. 89484, Private RYAN, J., 5 C.I.T.R. is a fully trained soldier who served with the Cape Breton Highlanders in Italy from November, 1943 to October, 1944 and was wounded in action.

MEDICAL CATEGORY OF ACCUSED

No. F 89484, Private RYAN, J., 5 C.I.T.R. is 23, 1411111 Pulhems.

5.6-128.

Sgt. Ryan, J.M.

RECORDED AT CMHQ IN AB 160 5 C-128

CFA66 (In lieu of AFA81)
40/P & R/1808 (6144)

FIELD GENERAL COURT-MARTIAL

4/388

Convened by Order of COLONEL CEF JONES Comd 1 CONTINENTAL GP dated 24 Sept 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B/17132	SGT.		JOSEPH MALCOLM	RYAN	

PROCEEDINGS REVIEWED
16 Apr 45
Lt. Dep Capt
REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) BELGIUM on (*date(s)*) 2nd Nov 1944

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any,~~ and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2); accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(1). RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ as interpreter? Ans

The ~~interpreter~~ is sworn.(1) Do you object to LT. L.A. SCHOFIELD as shorthand writer? Ans ~~YES~~ NO

The ~~shorthand writer~~ is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR R. BONNAR	No1 Coy. G.F.C.
Member	CAPT. G.M. THOMAS	H.Q. 1 C.F.G.
Member	LT. E.H. SMEETH	XHA LIST ATT. HQ. 1CFG.
Judge-Advocate	NONE	
Prosecutor	LT. L.V.E. MERCER	No. 16 Coy G.F.C.
Defending Offr	CAPT. G.E. CURTIS M.M.	HQ. No7 G.F.D.

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO(1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused B/17132 SGT. JOSEPH MALCOLM RYAN before arraignment make(s) (no) ~~one~~ plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

A Con sup 65

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(B) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on .....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on .....charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to prfcedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO .(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.~~ (3) ~~The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~(4) KB
(1. *Delete remainder of this para. if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, ~~make a statement, or do neither ?~~ KB
Ans Accused wishes to give Evidence. Do you intend to call witnesses on your behalf ? Ans YES. Are they witnesses as to character only ? Ans YES.
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.~~(1)
Or, ~~The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2) KB.
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : ~~Do you wish to give evidence yourself or to call any witnesses as to your character ?~~(1) KB.
Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~extract~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex .2. and Ex .3. respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 2.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. YES KB
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(2) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(3)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : .....

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	NOT GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lass of kit see RP 44 fn 6.)

~~At present under arrest(†)~~ ~~beginning on (date)~~ R.B. (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.) R.B.

~~Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(†)~~

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

4 days Automatic Forfeiture of pay FR 1. 149 (1)(A)
Reduced to the rank of Private

(Sgd) ..... Judge-Advocate, if any. 2 March 45 Date awarded. (Sgd) N.P. Bowman Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is : I vary the sentence so that it shall read as follows" to be reduced to the rank" and confirm the finding and the sentence as so varied.

~~I direct that the accused be not committed to prison or detention barracks until further orders (†)~~

(†. AA 57A. Delete if not used.)

Date 17 Mar 45

(Sgd) C. E. A. Jones. Colonel
Commanding 1 Canadian Forestry Group.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
Sgt. Ryan, J.M. B 17132	20 Mar 45.	W. Pebble Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RB.

CHARGE SHEET

The accused, No. B.17132 Sgt Joseph Malcolm Ryan, No.16 Company, Canadian Forestry Corps, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, absented himself without leave from 2230 hours 22 December 44 until reporting to No.16 Company, Canadian Forestry Corps Detachment, at 1000 hours 29 December 44 (Absent 6 days, 11 hours and 30 mins.).

(M. MacLaggan) Major,
O.C., No.16 Company,
Canadian Forestry Corps,
Canadian Army, (Overseas).

In the Field
30 Dec 44.

Remanded for summary of evidence.

(M. MacLaggan) Major,
O.C., No.16 Company,
Canadian Forestry Corps,
Canadian Army, (Overseas).

In the Field
2 Jan 45.

Remanded for Field General Court Martial.

In the Field,
13 Feb 45.

(C.A. WILLIAMS) Lt.-col.,
Officer Commanding,
8 Cdn Forestry District (B),
Canadian Army Overseas.

In the Field
23 Feb 45

To be Tried By Field General Court Martial.

(C.E.F. JONES) Colonel
Commander
No.1 Canadian Forestry Group
Canadian Army Overseas.

RA.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-17132	Sgt	-	JOSEPH MALCOLM	RYAN	16 COY CFC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 23 Feb 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

MAJOR (Rank.)	R. BONNAR (Must be named. RP 106.)	NO.1 COY CFC (Unit.)

MEMBERS.

CAPT	G.M. THOMAS	HQ 1 CDN FORESTRY GP
LIEUT (Rank.)	E.H. SMEATH (Named or detailed. RP 106.)	X-4A LIST CFC (ATT HQ 1 CFG)

WAITING MEMBER.

Major	H.J. DOHERTY	No.14 Coy CFC
Lieut (Rank.)	L.A. SCHOFIELD (Named or detailed, if any. RP 106.)	NO.25 COY CFC (Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

C. E. F. Jones (Signed personally. ~~RP 105 (4)~~) Colonel (Rank.)

(C.E.F. JONES)

Dat 24 Feb 45

Commanding 1 Canadian Forestry Group

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 96 (In lieu of AFA 3) 40/F & S/1697 (6143)

(See overleaf for oaths and notes for use on trial.)

R.B.

NO. 16 Company, Canadian Forestry Corps
Canadian Army - Overseas

"I certify that I have this day examined

B171332	Sgt.	RYAN, J.M.
Reg'l No.	Rank	Name

and in my opinion he is fit to undergo trial by Court Martial."

Sgd. [signature] ...M.O.

Date. 2 March 1945.

EVIDENCE
re
FIELD GENERAL COURT MARTIAL
2 MAR 45
on charge against
B-17132 Sergeant Joseph Malcolm Ryan
No. 16 Company, Canadian Forestry Corps.

FIRST WITNESS FOR THE PROSECUTION. L 50184 CSM Thomson, S., Company Sergeant Major, No. 16 Company, Canadian Forestry Corps, Cdn. Army Overseas, having been duly sworn, states:-

EXAMINEDBY PROSECUTOR:

Q.1. Do you recognize the accused?
A.1. I do. (Witness indicates accused)

Q.2. The accused is charged with being absent without leave from 2230 hrs. 22 Dec 44 until reporting to No. 16 Coy. C.F.C. Detachment at Spa, at 1000 hrs 29 Dec 44. Total time absent 6 days, 11 hours and 30 minutes. Will you tell the Court, please, what you can about this matter?
A.2. Sir, on 22 Dec 44, No. 16 Coy. C.F.C. moved into billets at Westerloo arriving there shortly before noon. Just after we arrived, I was notified that all personnel within the billet area were confined to that area owing to an alert being in force at that time. This information was passed on to the members of the Company in a general way and that evening, I ordered the Orderly Sergeant, E-1018 Sgt. Lemelin, A.C. to make a check of the Company and see that they were in their quarters at 2230 hours. At Reveille the following morning, 23 Dec 44, the Orderly Sergeant, Sgt. Lemelin, A.C., informed me that the accused had been absent from his quarters when the check was made at 2230 hours the previous evening. At approximately 0800 hrs, 23 Dec 44, the Company was paraded and I personally called the roll. The accused failed to answer to his name. I then reported his absence to the Commanding Officer, after having made a search of the Sergeants' Quarters without finding any trace of the accused.

Q.3. When did you yourself last see the accused?
A.3. Sometime after we arrived in Westerloo on the 22 Dec 44. I could not state when.

Q.4. Do you remember if hexx was present for the supper parade?
A.4. No, Sir. I do not remember. We were messing at irregular intervals with No. 1 Cdn. Forestry Group personnel. I don't remember having seen him.

CROSS-EXAMINED BY OFFICER FOR THE DEFENCE:-

Q.5. Is it possible that Sgt. Ryan did not hear the order confining the Company to the billeting area?
A.5. Yes, Sir. That is possible. No one was warned individually.

Q.6. How long has Sgt. Ryan been one of your N.C.O.s?
A.6. Sgt. Ryan was a sergeant with No. 16 Coy. C.F.C. when I was first appointed to the Coy. as Sergeant Major late in April, 41, and has continued as a Sergeant ever since.

Q.7. Has he usually performed his duties and responsibilities as a good N.C.O. should?
A.7. Yes, Sir.

Q.8. Would any of his past activities lead you to believe he would have left the billets if had received the order?
A.8. No, Sir.

Page TWO follows.....

Q.9. While the Unit was in Westerloo, and afterwards in Louvain, was the usual discipline maintained or was there a sort of let down?

A.9. I would say discipline was maintained but the normal routine was relaxed quite a bit.

R.P. (83 (B) complied with.

SECOND WITNESS FOR THE PROSECUTION. E-1018 Sgt. Lemelin, A.C. Orderly Sergeant, No. 16 Coy. Canadian Forestry Corps, Can. Army Overseas, having been duly sworn, states:-

EXAMINED BY PROSECUTION:

Q.10. Do you recognize the accused?
A.10. Yes, Sir. (Witness indicates accused)

Q.11. What were your duties on the 22 Dec 44?
A.11. I was Orderly Sergeant, Sir.

Q.12. The accused is charged with being absent without leave from 2230 hrs. 22 Dec 44 until reporting to No. 16 Coy. C.F.C. Detachment at Spa, at 1000 hrs 29 Dec 44. Total time absent 6 days, 11 hours and 30 minutes. Will you please tell the Court what you know about this matter?

A.12. On the 22 Dec 44, I was detailed as Orderly Sergeant by CSM Thomson, S., and when we arrived at Westerloo, I was informed by CSM Thomson that everybody was to be confined to the billeting area. Later on in the evening, I was told by CSM Thomson to check the Sergeants' Quarters. This was about 2230 hrs on the 22 Dec 44. I then noticed that Sgt. Ryan was absent. I reported this to CSM Thomson on the morning of 23 Dec 44.

Q.13. About what time did the Company arrive at Westerloo?
A.13. About dinner time.

Q.14. It was right after that that the order was passed around warning the men that they were confined to the billets?
A.14. It was announced at the meal parade.

Q.15. Did you yourself see Sgt. Ryan at meal time?
A.15. I don't remember.

Q.16. When was the last time that you saw Sgt. Ryan?
A.16. Right after we arrived at Westerloo and got out of the trucks.

Officer for Defence declines to cross-examine witness.

R.P. 83(B) complied with.

THIRD WITNESS FOR THE PROSECUTION. Lieut. W.R.Lawton, Bush Officer and Officer i/c Spa Detachment, No. 16 Company, C.F.C., having been duly sworn, states:-

Q.17. Do you recognize the accused?
A.17. Yes, Sir. I do. (Indicates the accused)

Q.18. The accused is charged with being absent without leave from 2230 hrs. 22 Dec 44 until reporting to No. 16 Coy. C.F.C. Detachment at Spa, at 1000 hrs. 29 Dec 44. Total time absent 6 days 11 hours and 30 minutes. Will you tell the Court, please, what you can about this matter?

A.18. On the 29 Dec 44, I was the Officer i/c the Spa Detachment of No. 16 Coy. C.F.C. At approximately 1000 hrs. Sgt. Ryan reported to my headquarters there. I interviewed him for a few minutes and asked him what he was doing here, and he said "I am AWL from the Company". I placed him under open arrest and told him that he would have to carry on with some duties in the Detachment. He remained under open arrest and performed any duties which I allotted to him quite satisfactorily.

Page THREE follows.....

Q.19. Was his presence with your Detachment reported to the Commanding Officer?
A.19. Yes, it was.

Q.20. What happened then?
A.20. Sgt. Ryan's presence was reported to the Commanding Officer and Sgt. Ryan came up for office before me and was remanded to the C.O.

Q.21. Where was the main body of the Unit/ on the 29 Dec 44?
A.21. It was located at Heeze and Mille-Heeze, Holland.

Officer for Defence declines to cross-examine witness.

R.P. 83(B) complied with.

FIRST WITNESS FOR THE PROSECUTION. L 50154 CSM Thomson, S., Company Sergeant Major, No. 16 Coy. C.F.C., Cdn. Army Overseas, being recalled, states:

Q.22. Can you tell the Court when the Comapny moved from Westerloo?
A.22. The Company left in two detachments. The first left on 23 Dec 44 to Heeze, Holland, and the second to Mille-Heeze, Holland, on the 24 Dec 44.

Q.23. Was Sgt. Ryan/ with either of these Detachments?
A.23. No, Sir.

Officer for Defence declines to cross-examine witness.

R.P. 83(B) complied with.
Prosecutor declines to make any statement.

Officer for Defence declines to make any statement.

The accused expresses the desire to give evidence on his own behalf on oath.

FIRST WITNESS FOR THE DEFENCE. B-17132 Sgt. Ryan, J.M. Shipping Sergeant, No. 16 Company Canadian Forestry Corps, Cdn. Army Overseas., having been duly sworn, states:-

Examined by Officer for Defence:-

Q .24. Sgt. Ryan, did you hear the order confining the Unit to billets on the 22 Dec 44?
A.24. No, Sir.

Q.25. When you left the billets on the 22 Dec 44, did you go to Westerloo Village and meet up with some hospitality?
A.25. Yes, Sir. A little too good.

Q.26. Why did you not return to the Billets on the morning of 23 Dec 44?
A.26. I was on my way to the Billets when I stopped at a barber-shop. While in there I noticed a convoy passing of which some of the trucks belonged to No. 16 Coy. C.F.C. I therefore came to the conclusion that the Company was moving back to Spa. From there on I endeavoured to get back to Spa as best I could.

Q.27. Please tell the Court in your own words what happened from that time on until reporting to Lieut. W.R.Lawton at Spa.
A.27. I started back to Spa on the afternoon of the 23 Dec 44. By nightfall, I had arrived within seven or eight miles of Louvain, where I stayed overnight in a house.

Q.28. What mode of transport did you use?
A.28. I travelled by freight train this far.

Sheet FOUR follows.....

"On the 24 Dec 44, after walking some distance, I was picked up by a Belgian Naval Officer and arrived in Louvain between 1600 hrs and 1700 hrs. On the 25 Dec 44 I started out from Louvain and was given two lifts by American Jeeps. Between that and walking I finally arrived at Tirlemont where I stayed with an American Unit that night. On the 26 Dec 44, I started out from Tirlemont and was given a short lift after which I waited on a tram car for Liege. I arrived in Liege about 2000 hrs. I stayed at an English Artillery Billet after reporting to the Sgt. of the Guard. He took my Service Book and Identity Card to his Orderly Officer. I stayed there that night. On the 27 Dec 44, I reported to the American RTO at Liege and told them I wanted to get to Spa. He referred me to an American Postal Officer. This Postal Officer arranged with me to ride from Liege to Verviers late in the afternnon. I stayed in Verviers that night. On the 28 Dec 44, I walked about two miles out of Verviers and was picked up by a civilian truck who drove me to Pepinster. From there I walked for a while and was finally picked up by an American Jeep. We were stopped at the bridge entering Spa and had to show out identity cards. I got off downtown and walked to what was known as our old "B" Billets and in which there was an American Red Cross Unit. As it was near 1800 hrs. I stayed there all night, as Curfew was at 1800 hrs. On the 29 Dec 44, I inquired of some of the neighbours around the Billet where No. 16 Coy. C.F.C. Detachment were located and I was told they were at the Hotel de L'E urope where I reported at 1000 hrs.

Cross-examined by Officer for the Prosecution:

Q.29. What time were you in the barber shop at Westerloo on the 23 Dec 44?
A.29. At about 1100 hours.

Q.30. You say you endeavoured to get back to Spa as quickly as possible. The first day you say you got within seven or eight miles of Louvain?
A.30. Yes, Sir.

Q.31. And so, step by step, you finally arrived at Verviers on the 27 Dec 44?
A.31. Yes, Sir.

Q.32. How far is from Verviers to Spa?
A.32. I don't remember.

Q.33. How far is the L'Hotel de L'Europe from "B" Billets?
A.33. About five minutes walk. (R.P. 83(B) complied with.

SECOND WITNESS FOR THE DEFENCE. Lieut. A. Seed, Mill Officer, No. 16 Coy. Cdn. Forestry Corps, Cdn. Army Overseas, called as Character Witness, having been duly sworn, states:

Q.34. How long have you known Sgt. Ryan?
A. 34. Over 4½ years.

Q.35. What is your especial work with No. 16 Coy. C.F.C?
A.35. At present I am the Mill Officer and in charge of production, shipping, mill records, etc.

Page FIVE follows.....

Q.36. Who has been your assistant?
A.36. Sgt. Ryan has been my assistant all along. Previously while in Scotland, Sgt. Ryan was in complete charge of shipping while I was stationed in Aberdeen.

Q.37. Has his work always been entirely satisfactory?
A.37. Yes, it has always been excellent.

Q.38. Did Sgt. Ryan have any special job of a similar nature while in Normandy?
A.38. Yes, he was chosen to go to the C.F.C.Lumber Yard in view of his ability and was used to some length there.

The Defence is closed.

Officer for Prosecution declines to cross-examine witness. R.P. 83(B) complied with.

CLOSING ADDRESS BY PROSECUTOR.

The Prosecution respectfully submits that the evidence given substantiates the charge. The length of time the accused took to rejoin his Unit, in the opinion of the Prosecutor, shows lack of initiative on the part of the accused.

The Court is Closed to Consider the Findings.

FINDING.

The Court being re-opened, the Accused is again brought before it.

By consent of the Accused, the Prosecutor handed to the Defence AFB. 296 - Statement of Character and Particulars of the Accused, and MFM 6 - Conduct Sheet, which in turn were handed to the Court.

AFB 296 submitted to the Court, examined and marked as Exhibit "A".

MFM 6 submitted to the Court, examined and marked as Exhibit "B".

The Defending Officer makes the following Plea in Mitigation of Sentence:-

"President, Sir and Gentlemen:

From 19 Dec of last year until the end of the year, No. 16 Coy. C.F.C., was very much in a state of unsettled operations and billets. No. 16 Coy. moved from Spa to Louvain, remained there for a day or so, and then moved into Westerloo Billets with personnel of H.Q. No. 1 Cdn. Forestry Group, amidst a certain degree of confusion. While settleing in, a "C.B." order was passed around in a general way but it was not defintely certain that all personnel had heard the order. Sgt. Ryan was one who apparently did not hear the order and consequently he strolled "into the adjoining little village of Westerloo" some three minutes walk from the billets. While there he met some of the hospitable civilians and partook a little too freely of the offered hospitality with the result that he was found absent from his quarters at 2230 hrs 22 Dec 44.

While in the local barber shop for a shave the following morning, he noticed a convoy of trucks move by through the window and by the time he realized that it was his own Coy. on the move it was too late to do anything so he undertook to do what he thought was the next best thing - try to join the Coy. at their destination. His efforts to do this have been given in his own evidence under oath.

The value of Sgt. Ryan's services to his Coy. have also been given in evidence.

Realizing that his unauthorized absence might necessitate the ordering of a FGCM, with the extra trouble entailed he volunteered to give up his stripes. He was not allowed to do this but in turn is before this Court today. Why a soldier with Sgt. Ryan's record of good work done should be forced to have an entry of "FGCM" entered on his MFM.6 after nearly five years of service in the rank of Sergeant is something that seems hardly justified. The Defence respectfully appeals for consideration of these points.

It is admitted that some degree of punishment must be expected but in the interest of the Service and the job we are here to do, how much better it would be to have

Page SEVEN follows:.....

/have Sgt. Ryan retain rather than lose his rank so as he will be in a position to carry on his own specialized work. We are still "Civilian" and not professional soldiers and the rigidity of the "written word" in the Good Red Book may through the wisdom of the Court be somewhat slackened.

Such consideration is respectfully asked for.

The Court is closed for the consideration of the sentence.

RA

EXHIBIT "A"

ARMY FORM B.256 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank.	Name.	Regiment (or as the case may be).
B 17132	Sgt	RYAN, J.M.	No.16 Company, Canadian Forestry Corps.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, precedence being given to the most serious offence in each entry. If the charge is for drunkenness or, sinecure without leave, the entries for drunkenness or sinecure, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For	Absent Without Leave	One time.
For	Drunkenness	Two times.
For	----------	---- times.
For	----------	---- times.

Date of first entry in Field Conduct Sheet 13 April, 1942

Date of last entry in Field Conduct Sheet 7 July, 1944

2. [redacted]

*Strike out if not applicable.

*3. [redacted]

4. The accused has been awaiting trial on the present charges for [redacted] for Sixty-four days in military custody, *i.e.*, Sixty-four days in open arrest, [redacted]

5. The present age of the accused is 39 years

6. The date of his attestation is 24 August 1940

7. The service which the accused is allowed to reckon is 4 years, 5 months and 15 days.

†State the military decorations (if any) held by accused.

8. The accused is in possession of† Nil

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of ----------	----------
In the war substantive rank of Sergeant	2 Oct 41
In the acting rank of ----------	----------

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(21114) W1.9870/668 250,000 4/42 A & E W.Ltd. Gp.698
(21459) W1.29205/1879 60,000 9/42 " " Forms/B.256(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
NIL	NIL	NIL	NIL	NIL

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 2nd day of March 1945

E. E. Mercer Lieut.,
O., i/c Records,
No.16 Coy., C.F.C.

EXHIBIT "B"

No. B17132 Name Ryan, Joseph Malcolm (Regtl. No. in Company) 16 Corps C.F.C. Date of enlistment 24-8-40 Sheet No.

Date of last entry in Company Conduct Sheet: Nil No. and date of last drunk: 13-4-42 G.C. Badges: Long Service and G.C. Pay: Signature O.C. Company, etc.: R.T. Colquhoun, Major

Army Form B.122

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of earlier discussing with trial	By whom awarded	Remarks
				Original sheet destroyed after 6 months service E.R. (Can) 1524 (e)(1) No entries.					
Blackhall Camp	10-4-42	Sgt	1st	WOAS Drunkeness, in that he was drunk at Blackhall Camp at 1430 hrs (A.A.19)	CSM Thomson	Reprimanded 1st offence.	13-4-42	Major R.H. Montgomery	
Blackhall Camp	16-9-43	Sgt		WCAS, AWL from 0730 hrs 16-10-43 to 2200 hrs 18-10-43 (Absent 2 days, 14 hrs, 30 min.) A.A.15(1).	CSM Thomson Sgt Lemelin	Repremanded Forf.3 days pay FR&I 149(1)(a).	20-10-43	Major M.T.MacLaggan.	
Field.	5 Jul44	Sgt	2nd	Drunkenness, 2nd offence A.A.Sec 19.	CSM Thomson,S.	Severe Reprimand.	7 Jul 44	Lt.-Col. Burchett.	

(P.T.O.

Wt. 29249/793, 2m.m. 11/40, S.P. Co., 51-7951

Place	Date of offence	Rank	Corps of Unit concerned	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

CERTIFIED TRUE COPY

(M. MacLaggan) Major,
O.C., No.16 Coy., C.P.C.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of B.17132 Sgt Ryan, Joseph Malcolm of No.16 Company, Canadian Forestry Corps, C.A.O., charged with absenting himself without leave from 2230 hours 22 December 44 to 1000 hours 29 December 44 (Absent 6 days, 11 hours and 30 minutes) A.A.15(1).

The Commanding Officer does not direct or the accused demand, that the evidence be taken on oath.

First Witness — L50184 C.S.M. Thomson, S., No.16 Company, Canadian Forestry Corps, states:-

I am Company Sgt Major of No.16 Company, Canadian Forestry Corps and Sgt Ryan is in my Company. On the night of 22 December 44, while we were in quarters at Headquarters, 1 Canadian Forestry Group, I instructed the Orderly Sergeant, Sgt Lemelin, to make a check of the beds at 2230 hours. This he did and reported to me that Sgt Ryan was absent. The whole Company Had been ordered confined to barracks by the Officer Commanding on our arrival at Group H.Q. which was about midday on 22 December 44. There had been a warning issued that it was believed that there might be German Parachutists in the vicinity and the whole Camp had been confined to barracks.

At 0830 hours the following morning, 23 December 44, I called the Company out on parade and, myself, called the roll. Sgt Ryan failed to answer his name. I ascertained that he had not been seen by any of the other Sgts since late the previous afternoon, and reported his absence to the Officer Commanding. The accused was still absent when the Company left Westerloo for destinations in Holland on the 23 and 24 December 44.

Q.1 Do you know if Sgt Ryan heard the order that the Company was confined to barracks?

A.1 No, I can't be sure of that as the order was passed to the Company in a general way.

The accused declines to cross-examine this witness.

S. Thomson

.....
S. Thomson

Second Witness E1018 Sgt Lemelin, A.C., No.16 Company, Canadian Forestry Corps, states:-

On 22 December 44, I was detailed as Company Orderly Sergeant by C.S.M. Thomson, S. The Unit was confined to quarters on orders issued by the Officer Commanding. At 2230 hours I made a bed check of the Unit as ordered by the C.S.M. and found that Sgt Ryan was absent from his quarters and that he had not been seen by any of the other Sgts since late afternoon. I reported his absence to C.S.M. Thomson.

The accused declines to cross-examine this witness.

A.C. Lemelin

Third Witness Lieut. W.R. Lawton, No.16 Company, Canadian Forestry Corps, states:-

I am the officer in charge of a detachment of the Company at Spa, Belgium, and on 29 December 44 at 1000 hours, Sgt Ryan reported to my detachment. I asked him where he had come from and he replied, "I have been absent without leave". I placed him under open arrest and he has remained as such.

The accused declines to cross-examine this witness.

W.R. Lawton

Fourth Witness B20157 Sgt Martin, A.C., No.16 Company, Canadian Forestry Corps, states:-

I am the Orderly Room Sergeant of No.16 Company, Canadian Forestry Corps and on 31 December 44 I was instructed to send a letter to Headquarters, 1 Canadian Forestry Group, referring to the absence of Sgt Ryan. I herewith submit certified true copy of this letter in confirmation.

Fourth Witness (Cont'd)

Certified true copy of letter file 16/5-4, dated 31 December 44 and addressed to Headquarters, 1 Canadian Forestry Group, is submitted and to be known as exhibit "A".

The accused declines to cross-examine this witness.

A.C. Martin

The accused was cautioned as follows:-

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I do not wish to make a statement.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence, consisting of three pages, was taken down by me in the presence of the accused and that RP 4 (C),(D),(E) and (F) have been complied with.

(L.V.E. Mercer) Lieut.,
Adjutant, No.16 Company,
Canadian Forestry Corps,
Canadian Army,(Overseas).

In the Field
29 Jan 45.

LIST OF EXHIBITS

The following will be know as exhibits:-

"A" - A.F.B. 296.
"B" - M.F.M. 6.

K. Bonnar Major,
(K. Bonnar)
President of F.G.C.M.
held on 2 March 1945.

LIST OF WITNESSES

1. L50184 C.S.M. Thomson, S.,
No.16 Company,
Canadian Forestry Corps,
Canadian Army, (Overseas).

2. E1018 Sgt Lemelin, A.C.,
No.16 Company,
Canadian Forestry Corps,
Canadian Army, (Overseas).

3. Lieut. W.R. Lawton,
No.16 Company,
Canadian Forestry Corps,
Canadian Army, (Overseas).

4. B20157 Sgt Martin, A.C.,
No.16 Company,
Canadian Forestry Corps,
Canadian Army, (Overseas).

(L.V.E. Mercer) Lieut.,
No.16 Company, C.F.C.

135 T.

L/Cpl. RYAN, T.T.

F-78524 L/Cpl. Jerimine Thomas RYAN
C.B. Highrs. 5 C.I.R.U.(Arm'd Div.)

1357

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 26th day of NOVEMBER, 1942.

Whereas it appears to me, the undersigned, an officer in Command of "A" GROUP CANADIAN REINFORCEMENT UNITS, C.A.(O)., on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[XXXX

A.1.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
A.C.T. F-78524 L/Cpl. Jeremiah Thomas RYAN C.B. Nghrs. 5 C.I.R.U.(Arm'd Div.)	First Charge A.A. Sec. 40	Not Guilty.	Not Guilty. A.C.T. Paquet Major Jasper Camp. 5 Dec 42.	Confirmed. J. Stewart Lough Colonel 6 Dec 42.
	SEE CHARGE SHEET ATTACHED.			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :— NO A.C.T. 5 Dec 42.

(Signed) J. Stewart Lough Colonel, (Signed) A.C.T. Paquet Major
Commanding "A" Gp.Cdn.Reinf.Units, *Convening Officer* C.A.(O). Jasper Camp 5 Dec 42 *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) are to be PINNED here.

B.

Certificate of President as to proceedings.

I certify that the above Court assembled on the 5th day of December 1942 and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. ~~The witnesses~~ A. C. T. O.
*(3. ~~The interpreter~~) A. C. T. O.
*(4. ~~The officers under instruction~~) A. C. T. O.

were duly sworn.

* Omit if not applicable.

Signed this 5th day of December 1942

A. C. T. Paquet Major.
President of the Court Martial.

C. A. C. T. O.

Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this 5th day of December 1942

A. C. T. Paquet Major.
President of the Court Martial.

D.

Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 6th day of November 1942.

J. R. Stevenson Lieut.-Colonel
Confirming Officer.

Promulgated and extracts taken in the case of F-78524 L/C Ryan J.T., C.B. Highrs (5 C.I.R.U. (Arm'd Div.))

(a) (Dated) 5 Dec 42 (Signed) Lt. Col. Officer Commanding 5 CIRU(Arm'd Div)
Part II Orders 140 d/8 Dec 42

Promulgated and extracts taken in the case of

(Dated)..... (Signed).....

Promulgated and extracts taken in the case of

(Dated)..... (Signed).....

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(B4) Wt. 38092-1316 70m 2/41 W. & Co. Ltd. Gp. 741/2

B2.

CHARGE SHEET

The accused No. F-78524 L/Cpl. Jeremiah ~~Jeremiah~~ Thomas Ryan, C.B. Highrs. on strength of 5 C.I.R.U. (Arm'd Div.) a soldier in the Canadian Army Overseas, is charged with:-

FIRST CHARGE
SEC. 40
ARMY ACT.

When on Active Service, An Act to the Prejudice of Good Order and Military Discipline,

In that He,

At the Church Hall, Farncombe, at about 2200 hours 13 Nov. 42 did participate in a brawl, thereby causing a disturbance.

JASPER CAMP,
Witley, Surrey,
25 Nov. 42

N.B. Noble,
(A.B. Noble) Lt.-Col.,
Officer Commanding,
5 C.I.R.U. (Arm'd Div.)

To be tried by Field General Court Martial.

(J.R. Stewart Lough) Colonel,
Commanding,
"A" Group Cdn. Reinf. Units,
C.A.(O).

Convening Officer.

Witley, Surrey,
26 Nov. 42.

A.E.T. Paquet Major.
President

5 Dec. 42.

Medical Certificate (K.R. Can. 557) A3.

I certify that I have this morning examined No. F-78524 L/C. EVANS...

of C.M.H. 5 CIRU(AD) and in my opinion he is fit to undergo trial by ~~unfit~~

Court Martial.

Station..Witley,Surrey..... Medical Officer.....Capt.

Date..... 5 Dec 42

A.E.T. Paquet Maj for DDMS

A·4.

PROCEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT Jogjakarta ON THE 5th DAY OF Dec 47

TRIAL OF:-No. F78524 3/Cpl Ryan Thomas Unit C.B. Highs - JCIRU

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) Sgt M.A. Miller (Unit) Perth Rft

Defending Officer:- (Name) Sgt L.A. Ritz (Unit) C.B Highs

At 0925 hrs the trial commences.

The order convening the court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1 Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1 - No

The President, members and judge advocate (if any) are duly sworn.

The following constitute the Court:

President Major R.C.I. Paquet (Unit) PPCLI

Members Capt J.S. EADIE (Unit) Perth Rft

Capt A.C. McNaird (Unit) Hunt LPE

~~The officers under instruction are duly sworn.~~

~~Q2 Do you object to.....acting as shorthand writer? A2 -~~

~~The shorthand writer is duly sworn.~~

~~The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(B) is duly complied with.~~

~~The summary of evidence is read, signed by the President, and attached to the proceedings.~~

~~Court is closed to consider its finding. Court is re-opened.~~

Name.....(Unit).....sworn, produces AFB 296 and MFM 6 and upon being questioned by the Court states that the accused is the person named in these documents which have been compared by him with Regt'l records and are true extracts of the same. No cross-examination. Above documents read, signed by President and attached to the proceedings.

Q3 (To accused) - Do you wish to make any statement in mitigation of punishment? A3 -

Q4 Do you wish to give evidence yourself or to call any witnesses as to character? A4 -

---

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER GIVEN BEFORE THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE

A. Clr & quartermaster Sgt.

1st Witness for the Prosecution

C.5573 Cpl. S.F. Ray, No. 7 Provost Coy., Cdn. Provost Corp., having been duly sworn states:

I am C.5573 Cpl. S.F.Ray, No. 7 Provost Coy., Cdn. Provost Corp.

The Prosecutor declines to make an opening address.

Q.3 Tell the Court what happened on the night of 13 Nov. 42.

A.3 Sir, at about 2200 hrs. 13 Nov. 42 I was asked by the civilian police to report to the Farncombe Church Hall as there was trouble there. On arrival, accompanied by L/Cpl. Higgins, we found a number of fights in process. As the main part of the fight was in the kitchen we at once proceeded there. As soon as they saw we were Provost they all rushed for us. The man I now identify as L/Cpl. Ryan commenced throwing things at us. Some of the articles thrown hit L/Cpl. Higgins, such as cups. L/Cpl. Johnson, Provost, then entered the Hall and the Accused disappeared after that.

Q.4 Can you swear that articles were being thrown about the room and can you identify anyone in this Court who threw articles about.

A.4 Yes Sir, L/Cpl. Ryan.

Examined by the Defence:

Q.5 Who was fighting as you entered the kitchen.

A.5 They were fighting amongst themselves. There were four or five different Regiments.

Q.6 How do you explain that as soon as they saw you were Provost they rushed at you.

A.6 Just that they identified us as Provost.

Q.7 They forgot all their previous animosity and turned on you, correct?

A.7 Not exactly. Some did. The fighting was of a furious nature when we entered.

Q.8 Who else did you see throwing articles in the kitchen.

A.8 L/Cpl. Jewell, Pte. Campbell.

Q.9 When did you first see the Accused after this fight.

A.9 I believe he was taken to civil police station shortly afterward, but I wouldn't swear to it. Next morning on identification parade I did see him.

Q.10 Did you pick him out.

A.10 Don't remember. Other Provost who were there ahead of us had already picked out a number of soldiers.

Q.11 Is it not a fact that the Provost, including yourself, walked up and down a muster parade held for identification purposes, and the Accused was not picked out until the Corporals had been segregated, and only then by the civilian police.

A.11 I did walk up and down the ranks. When the Corporals fell out by themselves there was only one who was picked out, and he was a full Corporal.

Re-examined by the Prosecution.

Q.12 When did you arrive for the identification parade.

A.12 About 1130 hrs. There was no need for me to identify the Accused at that time. The civilian police who were there knew him as one who had participated in the fight.

Rule 83 B has been complied with.

2nd Witness for the Prosecution

A.3308 L/Cpl. M.J. Higgins, No. 7 Provost Coy., Cdn. Provost Corp, having been duly sworn states:

I am A.3308 L/Cpl. M.J. Higgins, No. 7 Provost Coy., Cdn. Provost Corp.

Q.13 Tell the Court what happened on the night of 13 Nov. 42.

A.13 We went to the Farncombe Church Hall. There were several fights going on when we arrived. During one of these fights I saw Accused throwing articles at myself and Cpl. Ray.

Examined by the Defence:

Q.14 About how many were in the kitchen.

A.14 About thirty, but I am not sure. The kitchen is about the size of this Court Room -- about 25' x 30'.

Q.15 You are sure you were in the kitchen.

A.15 Yes Sir.

Q.16 You're not sure of the number of people, judge the kitchen to be about 25' x 30' but you are certain the Accused was there.

A.16 Yes Sir.

Q.17 Did you know Accused before this night.

A.17 No Sir.

Q.18 When did you next see him.

A.18 On the N.C.O.'s Parade next morning. Accused was picked out of this parade, I believe by a civilian policeman.

Q.19 Did you walk through the muster parade.

A.19 Not all the way. The N.C.O.'s were told to fall out by themselves.

Q.20 Do you remember Pte. Johnstone of the Calgary Highrs. speaking to you about being assaulted by Accused that night.

A.20 Yes, Sir.

Rule 83 B has been complied with.

3rd Witness for the Prosecution

P.C. 307, Owen Havilard Breach, County Police, Godalming, having been duly sworn states:

I am P.C. 307, Owen Havilard Breach, County Police, Godalming.

Q.21 Tell the Court what happened on the night of 13 Nov. 42.

Q. 2 Do you wish to apply for adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence.

A.2 No.

The Prosecutor declines to make an opening address.

A.21I was called to a disturbance at the Church Rooms, Farncombe, where I saw a policeman had been injured. I asked a nearby soldier for a field dressing which he gave me. I recognize the Accused who was fighting in the Hall, but with whom I cannot say.

Examined by the Defence:

Q.22 This fighting was in the Hall.

A.22 Yes the Hall, not the kitchen.

Q.23 Did you attend an identification parade next morning.

A.23 Yes Sir.

Q.24 Didn't you walk through the ranks and fail to identify Accused.

A.24 I can't remember.

Rule 83 B has been complied with.

4th Witness for the Prosecution

T.C. 55, Albert Harry Hall, County Police, Godalming having been duly sworn states:

I am T.C. 55, Albert Harry Hall, County Police, Godalming.

Q.25 Tell the Court what happened on night of 13 Nov. 42.

A.25 On 13 Nov. I was at the Farncombe Church Hall. A dance was in progress. I was in civilian clothes but on duty. About 2130 hrs. a fight commenced in the side entrance kitchen doorway. I tried to stop it but found it too much for me. I went outside into Tottehham Road and saw T.C. Johnson and T.C. Smith who were on patrol. We all went back into the Hall, about 2150 hrs. Fighting was going on in the Hall. I recognize Accused fighting with other soldiers.

Examined by Defence;

Q.26 What is the kitchen's size.

A.26 About 10' x 18'.

Q.27 Where was Accused fighting.

A.27 In the dance hall and with other soldiers, but not Provost to my knowledge.

Rule 83 B has been complied with.

The Prosecution is closed.

D.
Defence

R.P. 41-41 Have been duly complied with and the accused is cautioned.

Q.28 Do you apply to give evidence yourself as a witness.

A.28 Yes Sir.

Q.29 Do you intend to call any other witness in your defence.

A.29Yes Sir.

Q.30 Is he a witness as to character only.

A.30 No, Sir.

1st Witness for the Defence

F.78524 L/Cpl. Jeremiah,Thomas Ryan, C.B.Highrs., 5 C.D.I.R.U., having been duly sworn states:

I am F.78524 L/Cpl. Jeremiah Thomas Ryan, C.B.Highrs., 5 C.D.I. R.U.

Q.31 Tell the Court your actions night of Nov. 13, 1942.

A.31 I went to the Farncombe Church Hall dance about 2000 hrs. I had about three dances, then left for the Pub for a few beers. There was an argument in the Pub and I returned to the dance about 2100 hrs. I was at the dance for about forty-five minutes when Pte. Campbell told me he had two girls and asked me to go with him. We left with the girls.

Q.32 What was happening at the Hall when you left.

A.32 There were a few arguments. They were broken up. Another was started with some fighting and most the girls left the Hall. This is when I left with Pte. Campbell and his two lady friends. We took the girls home. I then returned to billets.

Q.33 Who did you strike at the Hall.

A.33 No one Sir.

Q.34 Tell what happened at the Muster Parade next morning.

A.34 Civilian police and Provost walked up and down our ranks, and picked out soldiers they claimed were in the fight. I was not picked by either police or Provost. Cpl. Ray and L/Cpl. Higgins with other Provost passed me. The two civilian police who were in this Court (Breach and Hall) passed me. Then Major Gunn called the N.C.O.'s to one side. We lined up and the Police and Provost looked at us. I was picked out by a policeman. I was taken to a lecture hall and questioned.

Examined by the Prosecution:

Q.35 You said fighting was going on in the Hall.

A.35 It was in the Dance Hall.

Q.36 What were you doing while the fighting was going on.

A.36 I was dancing with some girls. When the fight started I was standing near the stage when Pte. Campbell came to say he had two girls for us to take home. I then left. The crowd was still there.

Q.37 Did you see the two police constables who gave evidence here to-day.

A.37 I saw one. He was near me by the stage, not making any attempt to stop the fight.

Q.38 Did you know one of these constables took L/Cpl. MacDonald out of the Hall.

A.38 No Sir.

Q.39 Did you know one of the police was injured requiring first aid.

A.39 Yes Sir. I saw a policeman with a handkerchief round his forehead.

Q.40 Were you in the kitchen.

A.40 No Sir.

Q.41 Did you see anything being thrown.

A.41 No Sir.

Q.42 Did you see Cpl. Ray and Higgins.

A.42 No Sir, I saw no Provost.

Q.43 When did you first see them.

A.43 On the identification parade. They were also on the N.C.O.'s identification parade.

Q.44 Who else was there.

A.44 The two civilian police, a few more Provost. The policeman identified me. (T.C.Breach).

Q.45 During the parade was T.C. Breach in front of Cpls. Ray and Higgins.

A.45 Yes Sir. T.C. Breach identified me before the Provost approached our N.C.O.'s identification parade.

R.P. 83 B has been complied with.

2nd Witness for the Defence

K.67098 Pte. Johnstone, J., Calgary Highrs., 2 C.D.I.R.U. having been duly sworn states:

I am K.67098 Pte. Johnstone, J., Calgary Highrs., 2 C.D.I.R.U.

Q.46 What was your impression of your relations with Accused. at the Dance Hall 13 Nov. 42.

A.46 He resembled the party who first struck me. When the Provost on the first identification parade asked me if this was the man who struck me I said I did not think so as he was too short. This was at No. 3 Guard House.

Q.47 What had you told the Provost regarding the Accused.

A.47 Nothing.

Q.48 Were you helping the Provost.

A.48 Yes Sir. Cpls. Ray and Higgins.

Q.49 What did you see of the Accused's fighting.

A.49 I did not see him fighting. I did not see him at the Hall. I was helping the Provost in the kitchen for about five minutes until reinforcements arrived.

Prosecution declines to cross-examine the Witness.

R.P. 83 B has been complied with.

3rd Witness for the Defence

F.54764 Pte. Campbell, V., C.B. Highrs., 5 C.D.I.R.U., having been duly sworn states:

I am F.54764 Pte. Campbell V., C.B.Highrs., 5 C.D.I.R.U.

Q.50 Tell the Court what happened at the Dance Hall 13 Nov. 42 in relation to the Accused.

A.50 I was in the Hall. A fight started. I saw Pte. Ryan near the stage. I went to him and said I had two girls and asked him to take them home with me. We took them home. That was about 2150 hrs.

Q.51 What happened at Muster Parade in the morning.

A.51 The Provost and policemen went around. They didn't pick out Accused the first time. He was picked out in the N.C.O.'s parade later.

Cross-examined by the Prosecution.

Q.52 Were you on the N.C.O.'s parade.

A.52 No Sir.

Q.53 Then how did you know the Accused was picked out on that parade.

A.53 We all fell in together, the N.C.O.'s fell out later by themselves. They were three or four feet from us and I could see Accused being picked out.

Q.54 Were you in the kitchen 13 Nov. 42.

A.54 No Sir.

R.P. 83 B has been complied with.

4th Witness for the Defence

F.89745 Pte. Whitehead, M. G., C.B.Highrs., 5 C.I.R.U., having been duly sworn states:

I am F.89745 Pte. Whitehead, M.G., C.B.Highrs., 5 C.I.R.U.

Q.55 Did you see Accused night of 13 Nov.

A.55 Yes Sir, coming in A 3 Hut Door, Jasper Camp.

Q.56 What time.

A.56 Before 2300 hrs.

Cross examined by the Prosecution.

Q.57 Were you up at that hour.

A.57 Yes Sir.

Q.58 Were the lights on.

A.58 No. Sir.

Q.59 How did you identify Accused in the dark.

A.59 It was rather light that night.

Q.60 Do you know when we have blackout time.

A.60 About 1710 hrs.

Re-examined by Defence.

Q.61 Where were you coming from when you saw the Accused.

A.61 The toilet Sir.

Q.62 How long have you know Accused.

A.62 About seven months Sir.

R.P. 83 (B) has been complied with.

Appendix A.= Defending Officer's closing address.
Appendix B.= Prosecutor's.

The Court is closed at 1245 for consideration of the finding.

The Court reopens at 1415 hrs. 5 Dec. 42.

The Court find that the Accused F.78524 L/Cpl. Jeremiah Thomas Ryan, C.B.Highrs., 5 C.I.R.U., a soldier of the Canadian Army Overseas in NOT Guilty of the charge laid against him.

The finding is read in open court and the Accused is released.

The Court closes at 1430 hrs.

....., this 5th Day of December 1942.,
(A.E.T.PAQUET), Major, Pres.

Jasper Camp, Witley, Surrey.

Appendix A.

Closing address by the Defending Officer in the case of F.78524, L/Cpl. Jeremiah Thomas Ryan, C.B.Highrs., on strength of 5 C.I.R.U.(A.D.

Mr. President, Gentlemen:

When you have such evidence of vagueness and contradiction that is before you, the acquittal of the Accused should be made.

We find Cpl. Ray failing to recognize the Accused on the first parade. So also L/Cpl. Higgins. Constable Breach fails even to remember when he identified him. Constable Hall only the bare and bald fact that he saw him fighting.

The Accused has stated he has been avoided in the first identification parade. What sort of an identification parade it would be when, three quarters are eliminated completely for a second trial, is surprising.

Here we see also Cpl. Ray who says that some dozen men are fighting and he claims, they drop all their fighting and attack the Provost. They lease all the fury, that he describes, and switch over their rage to the Provost. A likely story indeed. Likely only to the effect that they are out to convict some Cape Breton Highlanders. That is a strong statement. I make it with full knowledge of its implications.

The Charlie McCarthy individual L/Cpl. Higgins echoes all the facts that tend to incriminate the Accused, but to such simple questions as the size of the kitchen, he puts it three times the size by one witness. Indeed by my figures 4 ½ times the size. Nor will he venture to state how many were in the kitchen, without pressure, and he knows the difference of kitchen and hall well enough in the past cases.

What is an identification parade? It is a plan of lining people up and having an investigator pick out a certain party. Now once this cannot be done with the whole numbers it vitiates all the power or virtue out on identity parade. If you start limiting to a small group the efficacy of the plan is struck to the root. I leave that for your earnest attention and consideration.

Now the vagueness of the evidence of the Constable Breach that he does not remember whether or not he identified the Accused is, I suggest explicable by the fact that he forgot the Accused face. How otherwise would he not know this, which happened only a fortnight ago, and whom he has seen all through this and the two previous trials.

Finally with the Constables there is the vague statement by Const. Hall that he saw him fighting. How long, with whom, how, are not alleged. Indeed the only point he makes is that it was in the Hall, though by the Prosecution's own witnesses that is refuted.

Gentlemen, I put it to you, are you not entitled to believe my witnesses as well as the Prosecution. If so, an acquittal is logically demanded.

We have shown the actions of the accused when he was at the hall, Clearly for you.

There has been two convictions from these same set of circumstances before this Court. This is another case. I do not fear that this Court will be prejudiced in any way because of this, regarding the Accused.

The Accused has told a straightforward enough story and is entitled to be credited. It will be component with the views of justice that he be acquitted. Indeed I ask that you be doing your duty and give him the benefit of any doubts you may have.

(Over)

So often a military trial often leads to thoughts of guilt, beaause all of us in the Army dislike bringing a person up for trial. But in this melee when so many persons were invovled a number could be rounded up and it is so likely that an innocent person taken in the confusion, along with the guilty.

Appendix B.

Summing up of the Prosecutor in the case of F.78524 L/Cpl. Jeremiah Thomas Ryan, C.B.Highrs., on strength of 5 C.I.R.U.(A.D.).

There is no attempt by the defence to deny that there was fighting going on at Church Hall, Farncombe. Prosecution witnesses have described the fighting as furious. The two Provost have identified the Accused as throwing articles about the kitchen. Some of these articles struck one of the Provosts.

The two civilian police identify the Accused as one who was fighting. They remain firm in their identification despite the regorous cross-examination to which they were subjected.

Much has been made of the fact that the two Provosts did not recognize the Accused during the N.C.O.'s identification Parade. The Provosts stated that the accused had already been identified by someone else before they reached the Accused or before they had an opportunity to identify the accused. The accused admits that the constable who did identify him preceeded the Provosts.

The accused admits that he saw fighting in the hall but denies that he was involved. He admits to being near a civilian policeman whom he states did not try to stop the fighting. But, the accused admits that he knew of a constable being injured during the fighting and saw one constable with a bandage on his forehead. The constable whom he claims did nothing to prevent the fight is the constable whom he admits being near while the fighting was going on. Is it possible that the accused being in the centre of the action avoided a participant? Is it possible that the constable being only a few feet from the accused could be wrong in his identification.

The defence ask that the evidence given by the two Provost be be largely discredited. It is suggested that the Provost have some fancied grievance against the C.B.Highrs., hence the zeal with which they persued their duties. The Court is reminded that the Provost did not appear on the scene after the police who were already at the Hall were reinforced by still more civilian police. The Court can judge of the extent of the disorder when it was twice necessary to obtain assistance to deal with the disturbance.

For the Prosecution.

M.J. Hall Lieut

A 5(2)

SUMMARY OF EVIDENCE

Summary of Evidence in the case of F.78524 L/Cpl. Jeremiah Thomas Ryan, C.D.Highrs., on the strength of 5 C.I.R.U.(Arm'd. Div.) a soldier in the Canadian Army Overseas.

By Direction of the Commanding Officer the Summary of Evidence is taken on Oath.

FIRST WITNESS
FOR THE PROSECUTION

C.5573 Cpl. Ray, S.F. No. 7 Provost Coy., Canadian Provost Corps, a soldier in the Canadian Army Overseas, being duly sworn states:-

I am C.5573 Cpl. Ray, S.F. No. 7 Provost Coy., Canadian Provost Corps. I was on duty on 13 Nov.42, at Godalming, at 2200 hours I was called to the Church Hall, Farncombe. When I arrived in company with L/Cpl. Higgins we found fighting in progress. There were a number of fights. As the main fight was in the kitchen part of the Hall we went there. In the kitchen I saw L/Cpl. Ryan, whom I now identify. He was in the background not actually fighting but throwing everything he could get his hands on. Some of the things he threw such as cups, pans and trays landed on L/Cpl. Higgins. After more help arrived to assist us L/Cpl. Ryan left the kitchen and I never saw him after that.

Cross-examined by the accused

Q.1 What time did you say you saw me throwing things?
A.1 At approximately 2215 hours.
Q.2

(Signed) S. F. Ray.
(Ray, S.F.) Cpl.

SECOND WITNESS
FOR THE PROSECUTION

A.3308 L/Cpl. Higgins, M.J. No. 7 Provost Coy Canadian Provost Corps, a soldier in the Canadian Army Overseas, on being duly sworn states:-

I am A.3308 L/Cpl. Higgins, M.J. No. 7 Provost Coy Canadian Provost Corps, I was on duty in Godalming 13 Nov. 42 in company with Cpl. Ray. We were called to the Church Hall about 2200 hours 13 Nov.42 to quell a disturbance. When we arrived fighting was in progress. We tried to stop the scrap. We went to the kitchen part where fighting was going on. We tried to stop this fight. Certain soldiers started to throw stuff at us. One of these soldiers I now recognize as L/Cpl. Ryan. Some of the things thrown struck me.

A E D

Cross-examined by the accused

Q.1 If you recognize me now why couldn't you recognize me when we were paraded for identification?
A.1 You were picked out by someone else before I got to you.
Q.2 Isn't it true that during the Company parade and the N.C.O. identification parade which followed, I was not picked out by the Provost?

SUMMARY OF EVIDENCE

Summary of Evidence in the case of F.76524 L/Cpl. Jeremiah Thomas Ryan. (Cont'd.)

SECOND WITNESS
FOR THE PROSECUTION (Cont'd.)

A.2 You were not picked out by the Provost to my knowledge.
Q.3 If you recognize me now why didn't you and the other Provost Recognize me during the parades?
A.3 The Officer of the Parade was asked to form up all his N.C.O.s on parade as there were a few P.C.O.'s at the dance whom we could recognize.

Signed: M.J. Higgins
(M.J. Higgins)L/Cpl.

THIRD WITNESS
FOR THE PROSECUTION

Police Constable 307, Owen Hovilard Breach, County Police, stationed at Godalming. At about 2145 hours on 13 Nov.42 I was called to the Church rooms at Farncombe. When I arrived I afound fighting in progress . I saw that a Temporary Policeman had been injured and Iasked a soldier if he would give me a field dressing to bandage the wound. He willingly gave me this and just after this he was attacked. I did not see the accused strike the first blow as it was done by L/Cpl. McDonald. I saw the accused was fighting and he was in company with L/Cpl. McDonald who was also fighting. I am not able to say who the accused fighting with but he was near the soldier who had given me the bandage and adopted a very aggressive attitude. If it had been possible to get near him I should have arrested him.

Cross-examined by the accused

Q.1 Why was it not possible for you to get to me to arrest me?
A.1 Because you were rushing about and I also was then taking away L/Cpl. McDonald.

Signed:
Owen H Breach (O.H. Breach)
P.C. 307
P.C. 307

FOURTH WITNESS
FOR THE PROSECUTION

Temporary Constable 55 Albert Harry Hall, attached to County Police Station, Godalming on being duly sworn states:-

I am Temporary Constable 55 Albert Harry Hall, attached to County Police Station, Godalming. I was in the Church Hall about 2145 hours 13 Nov.42. I was in civilian clothes. A number of fights broke out. I kept observation on quite a few who were doing the fighting. One of those fighting was the accused whom I now recognize. Fighting continued for quite a time until it reached the proportions of a riot.
The accused declines to Cross-examine the Witness.

A.H. Hall T.C. 55 Signed:(A.H. Hall)T.C. 55

SUMMARY OF EVIDENCE

Summary of Evidence in the case of F.78524 L/Cpl. Jeremiah Thomas Ryan. (Cont'd.)

FIFTH WITNESS
FOR THE PROSECUTION

Temporary Constable 89, George Albert Johnson, County Police Stationed at Godalming on being duly sworn states:-

I am Temporary Constable 89, George Albert Johnson, County Police stationed at Godalming. I went from the Duke Of Wellington Pub to the Church Hall where I arrived about 2145 hours This was on 13 Nov. 42. When I arrived fighting was in progress. I saw the accused whom I now recognize at the dance hall but I cannot say that I saw him fighting.

Accused declines to cross-examine this witness.

Signed: G.A.Johnson
(G.A.Johnson)T.C. 89.

SIXTH WITNESS
FOR THE PROSECUTION

C.41316 Pte Hunter, H.H. P.E. Regt. on the strength of No. 1 C.D.I.R.U. a soldier in the Canadian Army Overseas being duly sworn states:-

I am C.41316 Pte Hunter H. H.P.E. Regt. on strength of No. 1 C.D.I.R.U. at about 2200 hours 13 Nov. 42. I was in the dance hall at Farncombe. At about 2210 hours two Provosts were fighting with men of the C.B.Highrs. I helped the Provosts. Several soldiers were throwing things. One of the men whom I saw throwing things was the accused whom I now recognige.

Questioned by the accused.

Q.1 How can you recognize me and not any of the others?
A.1 You were the only N.C.O. I saw fighting other than the two Provost.

Signed:
(H. Hunter)Pte.

SEVENTH WITNESS
FOR THE PROSECUTION

C.4155 Pte Storms, J. Hastings Prince Edward Regt. on strength of 1 C.D.I.R.U. a soldier in the Canadian Army Overseas being duly sworn states:-

D.E.D.

I am C.4155 Pte Storms, J. Hastings Prince Edward Regt. on strength of 1 C.D.I.R.U. on 13 Nov.42. I was at a dance in Farncombe at the Church Hall. I saw the accused whom I now recognize fighting and throwing things during the fighting which was going on that night. This would be between 2200 hours and 2230 hours.

Cross-examined by accused.
Q.1 With whom was I fighting?
A.1 You were fighting with one of the Provost in the corner of the kitchen. Signed: (Storms J.)Pte.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of F.78524 L/Cpl. Jeremiah Thomas Ryan. (Cont'd.)

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused has been duly warned in accordance with Rules of Procedure 4 (E) and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of four pages was taken down in the presence and hearing of the accused, and that Rules of Procedure 4 (C), (D), (E) and (F) have been complied with.

Jasper Camp,
Witley, Surrey,
25 Nov. 42.

(M.J. Geller) Lieut.,
Officer Taking Summary.

A.E.T. Paquet Major. pres.
5 Dec 42. Jasper Camp

Summary of Evidence

A.5.(1)

Summary of Evidence in the case of D71524 Sgt Jermiah Thomas Ryan, C.A.(R.C.R.), in the strength of 5 C.I.B. (A.B.), A soldier in the Canadian army Overseas.

By direction of the commanding Officer the Summary of Evidence is taken on oath.

First witness

For the Prosecution

C5573 Cpl Ray, A.F. No 7 Provost Coy, Canadian Provost Corps, A soldier in the Canadian army Overseas, being duly sworn states:

I am C5573 Cpl. Ray, A.F. No 7 Provost Coy, Canadian Provost Corps. I was on duty on 13 Nov 42, at Bootatering at 2100 hrs I was called to the Church Hall, Farnsbe. When I arrived in company with Sgt Higgins we found fighting in progress. There were a number of people in the main fight was in the kitchen part of the Hall we went there. In the kitchen I saw Sgt Ryan, whom I now identify. He was in the background not actually fighting but moving belligerent he came past his hands on those of the things he knew such as cups, pans and trays handed to Sgt. Higgins. After were helped it ceased. I was Sgt Ryan left the kitchen and I never saw him after that.

Cross-examined by the accused

Q1. What time did you say you arrived there?

A1. At approximately 2145 hrs.

Cpl Ray. A. F.

A.C.T.P.

Testimony of Evidence in the case of F 78524 Pfpl. Jerome Thomas Regan, continued

Accused testifies

For the Prosecution

A 3308 Pfpl Higgins, R. J. No. 7 Provost Coy, Canadian Provost Corps, a soldier in the Canadian army, Canadian Provost Corps, being duly sworn states:

I am A 3308 Pfpl Higgins R. J. No. 7 Provost Coy. Canadian Provost Corps. I was on duty in Bretteville, 13 Aug 44, in company with Cpl. Ray. We were called to the church Hall about 2300 hrs 13 Aug 44 to quell a disturbance. When we arrived fighting was in progress. We tried to stop the scrap. We went to the kitchen part where fighting was going on. We tried to stop the fight. The Canadian soldiers started to throw things at us. One of these soldiers I now recognize as Pfpl Regan threw stones at us.

Q1. If you recognize me now why couldn't you recognize me when we were paraded for identification?

A1. You were picked out by someone else before I got to you.

Q2. Isn't it true that during the company parade and the N.C.O. identification parade which followed, I was not picked out by the Provost?

A2. You were not picked out by the Provost to my knowledge.

Q3 If you recognize me now why didn't you and the other Provost recognize me during the parades?

A3. The Officer of the parade was asked to form up all the N.C.O's on parade as there were a few N.C.O.'s at the dance whom we could recognize.

W. J. Higgins

A. [illegible]

Summary of Evidence in the case of F 78528 Pte Jeremiah Thomas Regan continued.

Thursday, 16th June

For the Prosecution

P.C. 307, Owen Howland Breach, County Police stationed Kodaloring being duly sworn states:

I am P.C 307 Owen Howland Breach, Mobile Police, stationed at Kodaloring. At about 1400 hours on 12 Nov 42 I was called to the Sound rooms at Darwonda. When I arrived I found fighting in progress. I saw that a corporal policeman had been injured and I asked a soldier if he would give me a field dressing to bandage the wound. He willingly gave me this and just after that he was attacked. I did not see the accused strike the first blow as it was done by Pte McDonald. I saw the accused fighting and he was carrying with Pte McDonald who was also fighting. I saw not able to say who the accused was fighting with but he was near the soldier who had given me the bandage and adopted a very aggressive attitude. If it had been possible to get near him I should have arrested him.

Q. Why was it not possible for you to get to the accused?

A. Because you were running about and I was busy dressing the wound of Pte McDonald.

Owen H Breach
307.

D. E. D

Summary of Evidence in the case of F 785 24 Sgt Jamrid Thomas Regan - Continued

Fourth Witness

For the Prosecution

T.C. 55 Albert Harry Hall, attached to County Police Station, Godalming on being duly sworn states:

I am T.C. 55 Albert Harry Hall, attached to County Police Station, Godalming. I was in the Normandy Hall about 2145 hrs 13 No. 42 I was in civilian clothes. A number of people broke out. I kept observation on quite a few who were doing the fighting. One of those fighting was the accused whom I now recognize. Fighting continued for quite a time until it reached the proportion of a riot

Accused declines to Cross-examine this witness.

Hall T.C. 55

Fifth Witness

For the Prosecution

T.C. 89 George Albert Johnson, County Police Stationed at Godalming on being duly sworn states:

I am T.C. 89 George Albert Johnson, County Police, Stationed at Godalming I went from the Garden of Wellington Pub to the Normandy Hall where I arrived about 2145 hrs. This was on 13 No. 42. When I arrived fighting was in progress I saw the accused whom I now recognize at the corner had but I cannot say that I saw him fighting

Accused declines to Cross-examine this witness.

G. Johnson T.C. 89.

A.E.T.

Summary of Evidence in the case of F 7852 Pte Jeremiah Thomas Regan continued.

Sixth Witness

For Prosecution

C #1816 Pte Hunter, H. H. P. E. Reg on the strength of No 1 C.A.S.R.O. a soldier in the Canadian army Overseas being duly sworn states:

I am C #1816 Pte Hunter H. H P E. Reg. on strength of No 1 C.A.S.R.O. at about 2200 hrs 13th/14th I was in the Church Hall at Farcobe. At about 2210 hrs two Provosts were fighting with men of the C.A. Hughes. I helped the Provosts. Several soldiers were throwing things. One of the men whom I saw throwing things was the accused whom I now recognize

Questioned by the accused

Q1 - How can you recognize me as not any of the others?

A1 - You were the only N.C.O I saw fighting other than the two Provosts.

Henry Hunter

Seventh Witness

For the Prosecution

C #155 Pte Storms, J. Hastings Orris Edward, Reg. on strength of 1 C.A.S.R.O. a soldier in the Canadian army Overseas being duly sworn states:

I am C #155 Pte Storms J. Hastings Orris Edward, Reg. on strength of 1 C.A.S.R.O. On 13th/14th I was at a dance in Farcobe at the Church Hall. I saw the accused whom I now recognize fighting and throwing things during the fighting which was going on that night. This would be between 2200 hrs and 2230 hrs.

A.E.N.

Cross-examined by accused

Q1 - What whom were fighting?

A1 - You were fighting with one of the Provosts in the room of the dance?

Storms J.

Summary of Evidence in the case of 878524 Pte
Leonard Thomas Rogers, Cont. 4

The accused was cautioned as follows:-

Do you wish to make any statement in the first instance
or not? You are not obliged to say anything or to give
evidence unless you wish to do so, but whatever you say
or any evidence you give will be taken down in writing
and may be given in evidence.

The accused has been duly warned in accordance with
Rule of Procedure 4(8) and answers he proceed.

I certify that the foregoing Summary of Evidence consisting
of six pages was taken down in the presence and hearing of
the accused, and that Rule of Procedure 4 (c) (9)(c) and (f)
have been complied with

W.J. Bell Capt
Officer taking Summary

Harper Comp.
Wetherby Barracks.
24 JAN 44

D.C.T. Paquet Major Pro
5 DEC 42

A.2.

LIST OF WITNESSES

Jeremiah.

In the case of L/Cpl. J~~ames~~ Thomas Ryan, C.B. Highrs., on the Strength of 5 C.I.R.U. (Arm'd. Div.), a Soldier in the Canadian Army Overseas.

FOR THE PROSECUTION.

1. C.5575 Cpl. S.F. Ray, No. 7nProvost Coy., Cdn. Provost Corps.
2. A.3308 L/Cpl. M.J. Higgins, No. 7 Provost Coy., Cdn. Provost Corps.
3. Police Constable 307, Owen Hovilard Breach, County Police, Godalming.
4. Temporary Constable 55, Albert Harry Hall, County Police, Godalming.
5. Temporary Constable 89, George Albert Johnson, County Police , Godalming.
6. C.41316 Pte H. Hunter, Hastings and Prince Edward Regt. on strength of 1 C.D.I.R.U.
7. C.4155 Pte J. Storms, Hastings and Prince Edward Regt. on strength of 1 C.D.I.R.U.

FOR THE DEFENCE

NIL.

A.E.T. Paquet Trafford Pres.

A.6.

(1) I hereby acknowledge that I have been served with a true copy of the summary of evidence taken at Jasper Camp, Witley, Surrey, preliminary to my Court-martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court-Martial.

Dated at Witley, Surrey,
this 25th day of
November, 1942

L/Cpl. Ryan J. T

(2) I hereby acknowledge that I have been served with a true copy of an additional summary of evidence taken at Jasper Camp, Witley, Surrey, preliminary to my Court-martial.

(3) I hereby request that the Convening Officer to represent me at my trial.

I desire the services of Lieut. L.A. Kitz
if he is available.

Dated at Witley, Surrey,
this 25th day of
November, 1942.

L/Cpl. Ryan J. T.

A.E.T. Paquet Instr.

YY-145 (Case #2)

PTE RYAN T.T.

See T-135 for 1st case

YY-145

CFA96 (In lieu of AFA3)
40-P.A.S./1000 (2864)

FIELD GENERAL COURT-MARTIAL

Convened by Order of G. Francoeur, Brigadier, Comd "D" Gp, CRU dated 27 DEC 43.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-78524	Pte		Jeremiah Thomas	RYAN	7 CIRU CBH

PROCEEDINGS REVIEWED
A.O.Mach Lieut.
Jan 44
REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) England on (*date(s)*) 29 Dec 43 and 30 Dec 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member~~, JA, ~~if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order. CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~if~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1440 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter ? Ans~~

~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans~~
~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	H.H.A. Parker	48th Highrs of C 4 C.I.B.U.
Member	Capt	T.M. Howe	C.B. Hughes 4 C.I.B.U.
Member	Friend	H.B. Boales	Victor Hughes 7 C.I.B.U.
Judge-Advocate	Friend	J.A.N. Carle (Barrister at law)	HQ, C.R.U.
Prosecutor	Friend	A.E. Wilby	Cadet - York Rgt 7 C.I.B.U.
Defending Offr	Capt	F.R. Plourde	Cadet - York Rgt 7 C.I.B.U.

Questions by President: Is the Prosecutor a lawyer ? Ans Yes Is the Defending Offr a lawyer ? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~an~~ plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on .....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on .....charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans no sir.(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes ~~(an)~~ (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1) See Notes D 3 attached
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on ~~the~~ either charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on ~~the~~ both charge(s), ~~and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~ The court adjourned at 1700 hrs until 0930 hrs 30 Dec 43.
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans I wish to give evidence as a witness Do you intend to call witnesses on your behalf ? Ans Yes sir Are they witnesses as to character only ? Ans No sir.
(1. RP [redacted]. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

See Notes D 6 attached

Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is/~~are~~ (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding[redacted] of Not Guilty, and states to the accused that the finding[redacted] of the Court on the Second charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed by~~
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

~~E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)~~
~~Ans .....~~
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement[redacted] as to Character and Particulars of Service(1), and certified true copy ~~copies~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier[redacted] having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RF 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans No, sir only by way defending officer.
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to speak on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP [redacted]. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F-78524 Pte Ryan, Jeremiah Thomas - CBH - 7 CIRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Not guilty	Not Guilty	
2nd AA Sec 8(2)	Not guilty	Guilty	except that the offence took place between 2200 and 2230 hrs 16 Dec 43.
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56; RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1) Nil

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for a period of ninety (90) days.

(Sgd) JTV Cade Lieut. 30 Dec 43 (Sgd) W.W.S. Walker ~~President.~~ (RP 45, 50) major.

Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Finding and Sentence Confirmed

But I remit one (1) month detention

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) ~~GH~~

(1. AA 57A. Delete if not used.)

(Sgd) G Fraser Brigadier Commander "D" Group

Date 2 JAN 1944 Commanding (Cdn. Reinforcement Units) C.A. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
F-78524 Pte Ryan, J.T. CBH #7 CIRU. Pt. II orders 3 d/5 Jan 44	3 Jan 44	J.R.W. Illsley Lieut #7 C.I.R.U.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CHARGE SHEET

The accused No. F78524 Private Jeremiah Thomas RYAN, Cape Breton Highlanders, on the strength of 7 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, on Active Service, is charged with:

FIRST CHARGE
SEC 15(1)
ARMY ACT

When on Active Service, absenting himself without leave,

in that he,

at Haig Lines, Crookham, absented himself without leave from 2200 hrs 16 Dec 43 until apprehended by the Cdn Provost Corps in Aldershot at 2345 hrs 16 Dec 43.

Total absence - 1 hour 45 minutes

SECOND CHARGE
SEC (8) (2)
ARMY ACT

When on Active Service, striking a superior officer,

in that he,

in Aldershot, at approximately 2345 hrs 16 Dec 43 struck with his fist in the face Lt. E.A. Michon, Calgary Highlanders, 1 Cdn Inf Rft Unit

J.R. Calkin Col.

(J.R. Calkin) Colonel
Commander
7 Cdn Inf Rft Unit

In the Field
21 Dec 43

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

G. Francoeur

(G. Francoeur) Brigadier.
Commander,
"D" Group, Cdn Rft Units.

IN THE FIELD
27 DEC 1943

M.M.L.

FIELD GENERAL COURT-MARTIAL

CFA90 (In lieu of AFA8)
10/PAM/1697 (50693)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-78524	Pte		Jeremiah Thomas	RYAN	7 CIRU CBH

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 27 DEC 43 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

Major (*Rank.*)	H.H.A. Parker (*Must be named. RP 106.*)	48 Highrs & CIRU (*Unit.*)

MEMBERS.

A Captain	to be detailed by CO	7 CIRU
A Lieutenant (*Rank.*)	to be detailed by CO (*Named or detailed. RP 106.*)	7 CIRU (*Unit.*)

WAITING MEMBER.

(*Rank.*)	(*Named or detailed, if any. RP 106.*)	(*Unit.*)

JUDGE-ADVOCATE.

Lieut (*Rank.*)	J.A.V. Cade(Barrister at Law) (*Must be named, if any. RP 106.*)	HQ CRU (*Unit.*)

On Active Service in the Fd

in England (*Country.*)

G Bremner Brigadier.
(*Signed personally. RP 105 fn 2.*) (*Rank.*)

Date 27 DEC 43

Commanding "D" Group, Cdn Rft Units.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

MEDICAL OFFICERS CERTIFICATE

29 Dec 43

I certify that I have this morning examined No. F78524 Pte Ryan J.T.

7 Cdn. Inf. Reinf. Unit, and in my opinion,

he is fit / unfit to undergo trial by Court - Martial.

.....
(Medical Officer)
7 Cdn Inf Rft Unit

(2)

MEDICAL OFFICERS CERTIFICATE 30 Dec 43

I certify that I have examined this morning No. F78524 Pte Ryan J.T.

7 Cdn. Inf. Reinf. Unit, and in my opinion,

he is fit ~~unfit~~ to undergo trial by Court-Martial.

M.H. McGuire Capt.
(Medical Officer)

Notes D-3

First Witness for the Prosecution (4/591)

F 45568 Cpl MacLeod T. T. 7 CIRU, sworn, states I am on strength 7 CIRU. On night 16 Dec 43 I was orderly corporal for "A" coy. ~~I do not~~ I took roll call at 2200 hrs. Pte Ryan did not answer his name. I reported him absent. ORs are supposed to be in their quarters by 1000 hours with the exception of late passes. Pte Ryan to my knowledge did not have a late pass on the 16 Dec.

Cross exam. The 16 Dec was a Thursday.

Exam by Court - I do not know Ryan personally. The roll call is taken in the hut. I do not believe there is anybody in the hut or in the coy by the name of Ryan except the accused. I had just joined the unit & it was my first tour of duty.

Second Witness for the Prosecution

G 4070 Sgt Hovey H B, 7 Pro Coy, sworn states. On 16 Dec 43 at approx 2345 hrs, on duty in Aldershot. At corner of Victoria Road opposite Marina's Novelty shop my attention was drawn to a scuffle in front of the Victoria Hotel.

2/. I could see by the lights flashing that two soldiers were running towards me with someone in pursuit. Cpl Tranche and I proceeded to stop the two soldiers. I recognize the accused as one of them. Lieut Michon arrived. The group consisted of the two soldiers, myself and Lieut Michon, Cpl Tranche & Lieut Michon stated that he had been insulted & struck by one of the soldiers. I placed the two soldiers under arrest & took their particulars & escorted them to the guard room.

Cross-exam I said at approx 2345 hours; it could be before or after, as my watch is not accurate.

Exam by Court I heard boots scuffling, ~~dog~~ loud talk & a general rumpus but I did not hear a blow. I would say I was approx 30 yds from the Victoria Hotel. It was a fairly dark night & one could see across the road but would not be able to distinguish an officer from a soldier or a soldier from civilian from that distance. I did not observe any signs on Lieut Michon which would indicate he had been struck. The soldier's pay books were taken from them at the civilian police station & their identity established. My attention was first

drawn to the scuffle by the lights flaring in the air. When Mr Lieut Nichols first arrived I did not recognise him as an officer though he stated he was an officer. I first recognised him as an officer in the police station. I do not know if he was wearing a greatcoat or raincoat.

RP (83) is complied with

Third Witness for the prosecution

D 410 18 Apt Fraser RN, HMS, sworn, states:

On 16 Dec I was at 2345 hours I was on duty with Sgt Hovey in Aldershot. We were standing at the corner of Victoria Road in front of Marina's Novelty Shop when I heard what seemed to be a struggle in front of the Victoria Hotel. I walked towards Victoria Hotel when I saw two soldiers coming in our direction with someone running after them I stopped one of them and found out later that it was Pte Ryan We both went to the ground when I stopped him and an officer tanked me. We stood up and the officer said this man had hit him. Pte Ryan was placed under close arrest and I escorted him to the police station. The officer came to the police station

and gave us his particulars as Lieut Michon. I recognize the accused as the Lt Ryan whom I stopped on the 16 Dec.

Cross-Exam I have a watch but I did not look at the time when the ~~plaee~~ accused was placed under arrest.

Re-exam I knew that it was fairly late in the evening somewhere between eleven and twelve midnight and closer between 1100 to 1130 rather than between 1130 and 1200. The pubs must have been closed for ~~between~~ approx an hour.

Exam by Court I knew the pubs were closed as the the Palais de Danse also closes at 1000 hours and I was at it when it closed. Also ~~the~~ there was more traffic on the streets.

I heard a loud voices, saw a torch flashing & ~~saw~~ heard the sound of a body and flashlight falling down. I was about 30 yds from the scene of the struggle. It was a dark night & at 30 yds could see bodies standing there but would not be able to distinguish if it were a soldier, civilian & woman. Sgt. Honey flashed his torch on me & Lieut Michon. I could see that Lieut Michon was an officer H

5. was wearing a greatcoat. I don't know what kind of hat he was wearing. I did not see anything unusual about him. Michons face in the police station. There were no other people between us and the scene of the scuffle.

After I left the Palais de Dance I went to the Cafe Hippodrome, had something to eat, & went to meet Sgt Hovey.

R 183 (B) complied with

Fourth witness for the Prosecution

Lieut E A Michon, Calg Highrs, on sworn, states

Off 1 C I R V. on 16 Dec 43 at approx 2200 hours I was crossing Victoria Road and met two soldiers who spoke to me. I ignored them and started walking past them. They used foul and abusive language. I turned to them & told them not to speak that way on the street. They kept on that way & I told them they were speaking to an offrs. The soldier then straightened up & said he was only asking where he could find a place to eat. I told him I did not know where & was hit by the other. I then turned my head on the face of the man who struck me. I saw two offrs on the sidewalk & asked them to call

the Provost. They said they would. The soldiers then started down the street. I followed them down it when they were apprehended by the Provost. I told the Provost that I wanted to lay charges & gave them my statement. I walked into the Provost room at the police station it was somewhere in the neighbourhood of 2200 hours. I identify the accused as the man who struck me. On a later day I attended an identification parade. On one parade of approx 100 men I did not recognize anybody. On the second parade of 20-25 men I recognized the accused as the man who struck me on the 16th on the left side of my face with his hand. I know he had nothing in his hand as his hat came off and I turned the light on him as he was bending to pick it up.

Cross-Exam

I do not remember the first words that the two soldiers used. I ignored them as I was talking to the friend I was with. I did not notice if the two soldiers had lights. I had a torch. My partner may have had a torch but not to my knowledge. I told the two soldiers distinctly that

7 I was an officer. I had my light in my hand and at first did not flash it on the 5 men. I ignored the language I walked around them & was about 2 or 3 paces from them when one of them said "fuck you, you bastard" Neither made a move to hit me when these words were spoken; those are the first words I recall actually hearing just words ~~I~~ clearly. I then turned towards them & told them not to use that language. I was quite close to them at that time. I did not flash the light on my pips as I did not think it was necessary when I told them that I was an officer. The two officers are from the same holding unit as I am.

Exam by Court I recognized one of the officers as of my holding unit but did not know their names. I was facing towards them roughly 10 to 15 yds away & the most I recognized them from the light of my flashlight. I had been in the bar of the Victoria Hotel & when they called "Time" or shortly after I came out on to the street. When I was hit I actually fell to the ground. I had on a battle dress & a greatcoat

7. Examined by JH

When I gave my evidence on the summary of evidence I do not believe that I stated 2345 hours. If I did it was a mistake I may have overlooked the time before signing it

I do not think the other two officers could have seen the blow.

RP 83 (B) complied with

Notes D-4

In Re: F 28324 Pte. Jeremiah Thomas Ryan

The defence moves for dismissal of the case on the grounds that the Prosecution failed to establish a prima facie case, for the following reasons:

1. On the first charge there is a material disagreement as to time. Sgt. Haney of the M.P. claims the time of the incident to have been 2345 hrs. But he admits that his watch was not exact. Cpl. Francis also of the M.P.'s admits that he did not look at his watch but relied on Sgt. Haney for the time. He admits also that the time could have been between 2300 hrs and 2330 hrs. Pte. Walker claims it was 2240 hrs. The other witnesses thereof do not agree on the time. Pte. Walton gave conflicting evidence as to time. On the summary, under oath and on his signature he claims the time to have been 2345 hrs. Before the court, also under oath, he testifies that the time was 2240 hrs.

2. On the second charge there is only the evidence of Pte. Walker that he was struck. He did not see who struck him; the prisoner testified that there was no malice in him. Moreover, how can his evidence be relied on for the second charge when it was impossible as to the second charge. He claims the blow knocked him down. Such a blow would leave a mark.

J. R. Brundage Capt.
Defending Officer

Dated 29 Dec 43.

Notes D-4

Prosecution submits that a Prima Facie case has been established in both charges for the reasons:

(1) Absence at 2205 has definitely proved by ordely Cpl - termination of absence and arrest at 2345 definitely proved by 2 Provost - Sgt Howes & Cpl Franks.

(2) In regards to 2nd charge blow being struck & fire proved by Lt. Nichol - circumstantial evidence supported by two Provost in the fact soldier running away for the reason they would not be running unless there was something they wanted to run away from. This is not of the essence of this charge here no other submission by defence in regards this.

(Notes - D-6)

First Witness for the Defence.

F 78524 Pte J. T. Ryan, 7CIRC, sworn, states on 16 Dec 43 I was with Pte McDougall AA. We left camp about 1800 hrs & went to a pub in aldershot where we stayed until they called time. We drank what beer we had in our glasses & walked out to the street. We met a soldier and a girl coming up the street. We asked if there was a tea-shop handy. He did not answer & kept walking. We said to hell with you or words to that effect. He hollered to us then. We stopped & he came up to us & told us we should not use language like that on the street as an officer. He told us he was an officer and we started down the street & he followed us down the street with a flashlight. Then we started to run. We only ran a little ways & the Provost stopped us. The officer came up & laid a charge. & we were placed under close arrest & taken back to our guard room.

The first words we used to the officer were if he knew if there was a tea shop handy. I did not have a word & to my knowledge McDougall did not. The soldier & girl went approximately 5 to 6 yds before the soldier stopped. We made no move to go towards him.

The soldier came back alone. He had a torch. It was a very dark night. I knew he was a soldier when we asked him the question. We did not leave the pub during the evening. We drank beer & some whiskey there. There were other people in the pub when we left it. I first saw an officer in the police station when he came in to lay a charge so I believe that is the man I was talking to.

Cross-exam.

The incident must have taken place around 22 00 hours as that is when pubs close. I drank - 8 or 9 beers and 2 or 3 whiskies. The soldier told the Provost he was an officer on the street after they stopped me. I do not know what the officer was wearing. I did not know the Provost were such.

I ran away because the soldier ~~started following us down the street as he did~~ stated he was an officer and I did not want to get in to trouble. I do not usually run away when accosted by an officer but that was the first officer I bumped into so I ran away. It was after I had said to hell with him and I thought it would get me in trouble. I did not strike anyone that night. I did not attempt to strike anyone. I did run away

Re-exam. The roll call was made regularly every night in our hut. If one is a little late & not in the habit of

being late the orderly corporal fixes it up.
I did not have a pass that night. I was
afraid if the Provost checked me they
would find I did not have a pass.

Exam by the Court

I do not know the name of the pub. It
was about 5 min walk away from the
Victoria Hotel. I had turned about two
corners. The soldiers words were "You
should not be using language like
that on a street to a superior officer."
I do not know how the girl in the
street was dressed. I did not actually
bump the officer I mean it was the
first time I had been stopped by
an officer. We walked away at
first & then started running. The
officer was standing there when I last
saw him. The flashlight went on
us. There were a few others on the
street we passed some walking
down the street. It was a pay night
there was quite a lot in the pub but
not many on the street.
I did not hear the soldier say
anything after he had said he was
an officer. He did not shout but
just followed us along the street.

RP 83 (B) complied with.

Second Witness for the Defence

F 32134 Pte McDougall. A. 7CIRV, sworn, states.

On 16 Dec 43 I left camp about 1800 hrs with Pte Ryan ~~stayed there~~ & went to a pub where we stayed until closing time. When time was called we finished half a glass of beer & walked down the street a short way. We saw two persons coming up the road & asked them where the nearest tea-shop was. There was no answer. They started to cross the road & we said to hell with them. He came back & said that we should not be talking like that on the street to a superior officer. As soon as I found out he was an officer I started down the street the Provost came along & stopped us & took us to their HQ. Mr Michon came in & laid the charge.

I did not have a flashlight that night the officer had a flashlight. I first saw that the soldier was actually an officer in the Provost guard room.

Cross-exam We were drinking double whiskies and beer all night. The time on the 16 Dec was about 2200 hrs. There were a few people on the street. I

did not take particular notice.

Exam by Court. I think the pub was the newmarket. It is about five minutes walk from the Victoria Hotel. The soldiers words were "That is no way to talk on the street to a superior officer." I turned & walked away. As I turned he was just standing there. He started talking, I do not know what about, & shone his light on us. I would not say he was shouting at us to stop. I could not see how he was dressed in the dark but in the Provost room he had on a greatcoat. I do not know who the other person was. The incident occurred not more than 5 min after the pub closed.

I did not strike or attempt to strike anyone that night nor did I hear or see anyone struck that night. I was pretty drunk & may not have heard clearly all the Officers remarks. No one said to me that they had struck anybody.

RP 83 (B) complied with.

Third Witness for the Defence

175586 Pte June V Smith ATS, A Coy, sworn, states.

On 16 Dec 43 at about 2155 hours I left the Victoria Hotel with Lieut Mirkin and we went over the road and two

Canadians asked us where they could eat We did not stop. One of them turned around & swore. Lieut Michon went back to him & spoke & while he was speaking the one chap struck the officer in the face. The officer slipped to the ground. He then called to the MPs and the two men started to run then & stopped at the end of the road. When I got there there was the two MPs the two men, the officer & myself. We were then taken to the station at about 2210 to 2215 hours. I waited ~~at~~ downstairs until about 2220 when Lieut Michon took me back to camp which I reached about 2230 hours. I did not speak to Lieut Michon until we reached the Police Station. The men looked as though they were drunk one had his cap off & the other with his on. I looked at my watch just as I put my hat on in the hotel & it was about 2155 hrs. The bar was just going to close.

The first words the soldiers addressed to us were "Was there any place to eat. I stopped but the officer kept walking & pulled me along too.

No cross-exam.
Exam by Court. ~~The soldier that struck the officer~~ I did not actually see the ~~striking~~ PTE.

but I could see Lieut Michon falling
I heard the blow while the officer
was speaking to the man that swore.
The other man turned around to the
side of the officer while the officer
was talking to the one who swore.
I identify the accused as the man that
moved to the side of the officer. The I
saw this man's face before the blow
was struck as the torch of the
officer had flashed on his face
when he walked back to them. I
was about 3 or 4 yds away.
The two men were side by side
with the light more or less on
both of them but the torch ~~went on~~ was on
most of the time on the man that
moved to the side. The torch was not
on when the blow was struck.
Lieut Michon was not rude he just
told them not to use that language.
We had only one pint of beer each
in the hotel though I could not say
what he had to drink before.
RP 83 B complied with.

Fourth Witness for Defence.

W 144 226 Pte Weniser I.C. A TS "A" Coy, sworn, states,
On 16 Dec 43 I looked ~~not later than~~ in myself about 2200 hrs.
I was just getting ready for bed when
Pte Smith came in not later 2245 hrs.
I remembered the night because Pte Smith
told me about the incident.
Cross-exam. 16 Dec was a Thursday.

By Court. It takes about 10 minutes to walk from the Police Station to our ramp.

RP 83(B) complied with.

Fifth Witness for the Defence

A/Major W R Burnett, 7 C I R U, sworn, states, I am O C of E Coy 7 C I R U. The accused is known by me as he has come under my observation & has impressed me as being reliable and trustworthy. He enlisted in June 41 & arrived overseas in July 42 where he took a 4 weeks unit NCO's course. On the formation of 7 C I R U being a member of the Cape Breton Highlanders he reported there. The accused has held positions of trust at 7 C I R U in that he for 3 months attended the Officers bar Haig Lines. He later became relief Head Waiter at Leipzig Officers Mess & still later was attached to the C L W S running a mobile canteen in Summingdale ~~Aldershot~~ until May. He returned to 7 C I R U holding the rank of L/Cpl. The accused is married & has one child. His marital relationship is good. He is the 5th child of 14. His family has a good ~~Military~~ Military service. The accused worked as a miner at home. He is good combatant material and prefers field service to specialist

training & appears anxious to join his field unit as quickly as possible as he has just returned from 4 months convalescent from an ankle broken on an obstacle course with his field unit. ~~Have~~ I consider him as NCO material.

I knew the accused in the field & remember the day of the accident. His conduct so far as I am aware was ~~exemplary~~ exemplary. I am only certain that he was a private as I have not seen him as an NCO.

RP 83 (B) complied with.

Re: F-25524. Pte. Jeremiah Thomas Ryan.

D-6.

Summing up for the defence.

1. The evidence of the defence showed, the incident to have occurred at 2200 hrs and not at 2345 hrs as stated by the prosecution.

2. That the accused had no means of knowing he was dealing with an Officer, except that Officer's word. He was very dark and Linus Meehan kept flashing his torch in the accused's face.

3. Provocation on the part of the Officer in 1) walking back towards the accused & leaving his pal friend behind thereby showing that he expected trouble; 2) flashing his torch in accused's face; 3) refusing to answer a civil & polite question put to him by accused; 4) meddling with O.R.'s under the influence of liquor; 5) when not on duty or in the course of his duties.

4. No one saw the actual blow - not even the Officer himself. A blow that would bring down a man of Linus Meehan's size would surely leave a mark - and yet all the witnesses testified that they did not see any mark on Linus Meehan's face.

5. No one could identify Linus Meehan as an Officer until he entered the defendants room.

6. If there be any doubt in the court's mind - as to whether or not Linus Meehan was drunk or so - the onus rests with the accused should have the benefit of that doubt.

D. W. Flavelle Esqr
defending Officer.

31 Dec 43

Prosecutor's Summary D-6

1. Intent - proved by fact
2. Provocation - none established - silence of officer's companion establishes this.
3. Blackout - non-identification of officer - testimony of 3 witnesses that accused was told by Lt. Nichon that he was an officer.
4. Evidence of MacDougall not acceptable without corroboration - sole accomplice.
5. Lt Nichon's evidence corroborated by defense witness Smith - heard blow struck & saw him fall
6. Time not essential to 2nd charge.

L. G. Wilberforce

Summing up by JA

Second Charge

The Court must be satisfied, if they convict, that the evidence shows that the accused knew the officer to be such, that is that he knew he was his superior officer. In the dark was the verbal statement of the officer clearly heard & understood by the accused? The court must also satisfy itself that the striking took place and that it was the accused who did the striking - identification.

The Court can arrive at a special finding as to the time if they consider that the actual hour of striking is not a material fact.

If there was any provocation, it is not grounds by itself for acquittal but tends to mitigate the punishment. on a prima facie case

The Court is refered to A A 56 in reference to a finding on a lesser offence.

Defending Off. [E-3]

MR PRESIDENT, MEMBERS OF THE COURT:

You have heard evidence for and against the accused. The decision of guily or NOT guilty, as you are well aware, rests with you. I would like to remind the court of the seriousness of the charge (s). If the man is guilty, he must of necessity be punished; but if there is the slightest suspicion of doubt then the accused should be given the benefit of that doubt.

Pte Ryan, from evidence produced, has carried out all duties assigned to him in a soldierly manner. At one time he held the rank of Lance Corporal and as such must have possessed a somewhat higher intellectual qualification than the average run of men in the ranks. He is supposed to be dependable and trustworthy beyond a doubt. I feel he has proved this, having as the evidence has shown, held positions of trust. Enlisted in June 41 - O/S July 42

It is my duty as defending lawyer to point out to you that many human beings, and soldiers are human beings, are provoked into doing things which under ordinary conditions their better judgement would prevail. Should you find in the course of your deliberations, the soldier guilty I beg you to remember that the situation may have been aggravated by blatant discourtesy and inconsideration of the feelings of one human being for another.

May I also point out that the accused is a married man with one child. He was, and is, endowed as the rest of us, with a sense of duty and loyalty. He wears the Kings uniform and is Overseas. He is, in a measure, friendless ----- very recently discharged from hospital. He has sacrificed much and is willing to sacrifice more ------ given the opportunity. I cannot but think there are extenuating circumstances in this case.

He respects authority for at one time he had to administer it: he respects rank for at one time he was an N. C. O. He is the type which realizes that a crime committed must be repaid.

I feel, and rather strongly so, that in view of the evidence submitted, that the life of this soldier should NOT be ruined. He should NOT be branded as a criminal ---- a mark which would not only effect his army career, but his future as a citizen. Pte Ryan comes from a family of fourteen. He has a first class scholastic record. He worked as quite a young lad to help ease the family financial situation. His is a loyal family for he has two brothers in the Army and Navy. Two others were rejected on physical grounds.

Gentlemen, again, if a reasonable doubt exists the accused should be given the benefit of that doubt. What reflection on army administration, what a travestry of justice, if such a lad as this were prevented from finishing the job he enlisted to do because of some doubtful, and the least one can say, an undetermined crime.

List of Witnesses in the case of F-78524 Pte. Ryan, J.T.

FOR THE PROSECUTION

First Witness	F-45568 Cpl. MacLeod, J.T.	CIC - 7 CIRU
Second Witness	G-4070 Sgt. Hovey, H.B.	7 Prov Coy, Cdn Prov Corps
Third Witness	D-41018 Cpl. Franche, N.P.	7 Prov Coy, Cdn Prov Corps
Fourth Witness	Lt. E.A. Michon	Calg Highrs - 1 CIRU

FOR THE DEFENCE

First Witness	Pte. June Smith	A.T.S.
Second Witness	F-32134 Pte. McDougall, A.	CIC - 7 CIRU

1. I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Leipzic Barracks, preliminary to my court-martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court-Martial.

Dated at Leipzic Bks
this 20th day of
December 194 3

J.T. Ryan
(J.T. Ryan)

2. I hereby acknowledge that I have been served with a true copy of an additional Summary of Evidence taken at Leipzic Barracks, preliminary to my Court-Martial.

Dated at Leipzic Bks
this 20th day of
December 1943

J.T. Ryan

3. I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of Capt F.R. Plourde
if he is available.

Dated at Leipzic Bks
this 20th day of
December 194 3

J.T. Ryan
(J.T. Ryan)

SUMMARY OF EVIDENCE

In the case of F78524 Private Jeremiah Thomas RYAN, Cape Breton Highlanders, on the strength of 7 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION

F45568 Cpl MacLeod J.T., Canadian Infantry Corps, on the strength of 7 Cdn Inf Rft Unit, having been sworn states:

I am F45568 Cpl MacLeod J.T., Cdn Inf Corps, on the strength of 7 Cdn Inf Rft Unit. On the night of 16 Dec 43 I was company orderly corporal for "A" Coy. At 2200 hours that date I called the roll and found the accused, whom I now recognize, to be absent. I checked the company roll, and found that he had not been issued with a pass, Other Ranks are supposed to be in their quarters by 2200 hrs.

--J.T. MacLeod--------Cpl

(The accused declines to cross examine this witness)

SECOND WITNESS FOR THE PROSECUTION

G 4070 Sgt Hovey H.B., Canadian Provost Corps, at present on strength of 7 Provost Company, having been sworn states:

I am G 4070 Sgt Hovey H.B., Cdn Provost Corps, on strength of 7 Provost Coy. At approximately 2345 hrs 16 Dec 43 while on patrol in the town of Aldershot in company with Cpl Franch, we were on duty at the corner of Victoria Road, opposite Marinas Novelty Shop. My attention was drawn to a scuffle opposite the Victoria Hotel. I heard loud talk and saw two soldiers running towards us with someone in pursuit. We stopped the two soldiers and questioned them. The accused whom I now recognize was one of the above two soldiers who we stopped. At this time Lt. Michon, Calgary Highlanders, 1 C I R U, came up and stated that he had been struck and insulted by the soldiers. I placed the two soldiers in close arrest and escorted them to their guard room where a body receipt was obtained and is on file at this H.Q. The two soldiers we stopped were Pte Ryan and Pte MacDougall. I recognize the accused here in my presence as Pte Ryan.

--H.B. Hovey----------Sgt

(The accused declines to cross examine this witness)

THIRD WITNESS FOR THE PROSECUTION

D41018 Cpl Franche N.P., Canadian Provost Corps, on strength of 7 Cdn Provost Coy, having been swrom states:

I am D41018 Cpl Franche N.P., Cdn Provost Corps, on strength of 7 Cdn Provost Coy. At approximately 2345 hrs 16 Dec 43 I was on patrol in the town of Aldershot in company with Sgt Hovey. We were at the corner of Victoria Rd., opposite Marinas Novelty Shop. My attention was drawn to a scuffle opposite the Victoria Hotel. I heard loud talk and saw two soldiers running towards us with someone in pursuit. We stopped the two soldiers and questioned them. The accused whom I now recognize was one of the above two soldiers who we stopped. At this time Lt. Michon, Calg. Highrs, 1 CIRU, came up and stated that he had been struck and insulted by the soldiers. We placed the two soldiers in close arrest and escorted them to their guard room where a body receipt was obtained and is on file in this H.Q. The two soldiers we stopped were Pte Ryan and Pte MacDougall. I recognize the accused here in my presence as Pte Ryan.

--N.P. Franche--------Cpl

(The accused declines to cross examine this witness)

SUMMARY OF EVIDENCE

In the case of F78524 Private Jeremiah Thomas RYAN, Cape Breton Highlanders, on the strength of 7 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

FOURTH WITNESS FOR THE PROSECUTION — Lt. E.A. Michon, Calgary Highlanders, on the strength of 1 Canadian Infantry Reinforcement Unit having been sworn states:

I am Lt. E.A. Michon, Calg Highrs, on strength of 1 C I R U. At 2345 hrs 16 Dec 43 while crossing Victoria Street, two soldiers questioned me. I ignored them as they had been drinking. After I had gone past, they used foul and abusive language. I told them they should not use such language when talking to an officer. While I was talking to one, the other hit me. I told two other officers nearby to report the matter to the Provost and I then followed the two soldiers down the street, when they were apprehended by the Provost. At the time I was struck I had a flash light and I had a good look at the soldier that hit me. I recognize him here now as Pte Ryan, the accused. At the Haig Lines 7 CIRU on 20 Dec 43 at about 1600 hrs I attended two identification parades. I did not see Pte Ryan on the first one but I did recognize Pte Ryan as soon as I saw him on the second identification parade and I recognized him immediately as the soldier that had struck me in the face, with his fist.

E. A. Michon — Lt.

(The accused declines to cross examine this witness)

The accused was cautioned as follows:

Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give eivdence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make any statement or to give evidence on oath.

I certify that the foregoing Summary of Evidence consisting of TWO pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (C) (D) (E) and (G) have been complied with.

A. E. Willey — Lt.
(Officer taking Summary)

In the Field
20 Dec 43

MFM 6 (AFB 122) 40/PAM/136 (3428) B

No F78524 Name RYAN, J.T. | Sqn, Battery, or Company | Corps C.I.C. | Date of enlistment 6-6-42 | GC Badges | Service or Proficiency Pay N/A | Character

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
								C.O. Huggard Capt.	
1st Sheet destroyed				6-12-42 - Last entry 10-9-42	No drunks				
Field	20-7-43	A/Cpl.		WOAS A.A.15(1) A.W.L. from 1330 hrs 20 Jul 43 until 1445 hrs 23 Jul 43 (Abs. 3 days 1 hr 15 min)	Sgt Hoard C Cpl Davidson T.R.	Reverted to Pte	24-7-43	W.C. Lawson Lt-Col	4 days pay FR & I 149 (1) (a)

30th Dec '43

Certified True Copy... officer having custody of original documents

M.F.B. 333
22M—5-41 (1772-3)
H.Q. 1772-99-3-20
A.F.B. 296

(A)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
F78524	Private	Jeremiah RYAN	C B Highrs - 7 CIRU

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental ~~Conduct sheets or Company Conduct Sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For A.A. Sec 15(1)	1 times	A.A. Sec 15(1) 1 times
For	times	times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~

~~There are no entries in the conduct sheets of the accused~~

Note.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act~~ A.F.A. 73 Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule ~~annexed to this statement~~

3. The accused is not under sentence at the present time.

~~The accused at the present time is under sentence for~~ beginning on the ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for ~~Air Force~~ Nil days in civil custody, and 14 days in military custody, making a total of 14 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 27 yrs 89 days

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper 6 Jun 41

7. The service which the accused is allowed to reckon towards discharge is 2 yrs 197 days

8. The accused is entitled to reckon 2 yrs 197 days service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward ~~or is not~~ military military ~~in possession of or entitled to~~ state any air force decoration or reward. military

~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of~~

WKR

~~11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ Permanent Force unit

dated , and in his regiment (or corps), the rank of

dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with of accused: Number Rank Air Force Unit Regiment

Name of

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody. A.P.W. Maj Asst 4/9/adjt #7 C.I.R.U.

Signed this 30th day of December '43

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

8 S R.

Pte RYAN, M J.

O. H. M. S.

M. F. B. 270
2000M-12-40-5058-59-70
H.Q. 1772-39-67

85 R.

Pte RYAN, M J.

O. H. M. S.

M. F. B. 270
30000M-12-40-(8068-09-70)
H.Q. 1772-39-45

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this twenty-sixth day of October, 1942. Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of 2nd Canadian Armoured Brigade, C.A., on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.];

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint :—

*[1. Three Officers to form the Court.)

*(2. A Field Officer as President.)]

for the following reasons, namely :—];

* Omit if not applicable.

PROCEEDINGS REVIEWED Lt Col (A/Col) Commanding Officer (Corps Troops) 25 Nov 42

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	G. A. ROSS	5 Armd Regt (RCAC)

Members.

Rank.	Name.	Regiment.
Capt	K. J. S. [illegible]	5 Armd Regt (RCAC)
Capt	J. S. [illegible] (Waiting Member)	5 Armd Regt (RCAC)
Capt	G. S. [illegible]	5 Can Armd Sqn Coy (RCASC)
Asst. Judge Advocate	Lieut. N. C. Fraser ADJA 5 Can Armd Div	

* Must be signed personally by the Officer actually in command at the time and all alterations in the composition of the Court to be initialled by him.

*Signed J. K. Gilchrist (J. Kenneth Gilchrist), Brigadier Commanding 2nd Canadian Armoured Brigade

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
A.11505 Pte Michael Joseph RYAN (Perth Regiment (Motors))	1. Sec 8 (1) A.A. 2. Sec 9 (1) A.A. 3. Sec 10 (3) A.A. See charge sheet attached	Not Guilty Not Guilty Not Guilty	(1) Not guilty of striking but guilty of pushing. 2. Not guilty. 3. Not guilty. 60 days det.	Confirmed Varied Suspended.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" Answer (*to be recorded on separate sheet if necessary*) :— No.

(Signed) (G.R. Bradbrooke) Brig
Comd 2 Cdn Armd Bde
Commanding 2 Cdn Armd Bde

(Signed)
Convening Officer (*c*)

(Signed)
President.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 28th day of Oct 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) ~~He was sworn.~~
*(4. The officers under instruction)
5. The Court Stenographer

were duly sworn.

* Omit if not applicable.

Signed this 28th day of October 1942.

Neil D. Fearon
Judge Advocate Major

President of the Court Martial.

* See footnote (b) on page 762 M.M.L. 1929

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this ~~day~~ of Oct. 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further order.~~)

Signed this 31 day of Oct. 1942

G.R. Bradbrooke
Confirming Officer. Brigadier
Commanding 2nd Cdn. Armd. Bde.

Promulgated and extracts taken in the case of

(*a*) (Dated) 7 Nov 1942 (Signed) D. Bentham Capt adj.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[84] Wt. 38092/1316 70m 1/41 W. & Co., Ltd. Gp. 748/2

Exhibit "G"

CHARGE SHEET

The accused No. A 11505 Pte Michael Joseph RYAN, The Perth Regt (Motor) CA a soldier of the Canadian Army placed on Active Service

is charged with:

First Charge
Sec 6 (1)
Army Act

When on Active Service, striking his superior officer, being in the execution of his office

in that he

at Pippingford Park, Sussex, on 16 Oct 42, did strike A 11325 Sgt L Nadon, The Perth Regt (Motor) CA, who was at the time taking into custody one A 54687 Pte Westrop W, The Perth Regt (Motor) CA.

Second Charge
Sec 9 (1)
Army Act

When on Active Service, disobeying in such a manner as to show a wilful defiance of authority, a lawful command given personally by his superior officer, in the execution of his office

in that he

at Pippingford Park, Sussex, on 16 Oct 42, when personally ordered by Lieut T Anderson, The Perth Regt (Motor) CA, Bn Orderly Officer, to go to bed and stop causing a disturbance, did not do so, but attempted by violence to prevent one A 11325 Sgt L Nadon, and an escort, from the performance of their duty.

Third Charge
Sec 10 (3)
Army Act

When on Active Service, resisting an escort whose duty it was to apprehend him

in that he

at Pippingford Park, Sussex, on 16 Oct 42, resisted the escort whose duty it was to apprehend him, by fighting and struggling with said escort.

In the Field
23 Oct 42

(J S H Lind) Lt-Col
Comd Perth R

To be tried by F.G.C.M.

Brigadier
Commanding 2nd Cdn. Armd. Bde.

MEDICAL OFFICER'S CERTIFICATE

K.R. (Can.) Para 557

I certify that I have this morning examined No A11505

Pte. RYAN M.J of Pack Sqn and in my opinion he is

~~unfit~~ fit to undergo trial by court-martial.

Station 2 Ck Field

Date 28/7/42

President

Medical Officer

Trial of A 11008 Trp. Lionel Joseph KENT, The Perth Regt (Motor) CA.

Held In the Field on 28 Oct 42.

PRESIDENT

Major G.R. Ross — 5 Armd Regt (SHER) CA

MEMBERS

Capt. F.J. Struthers — 5 Armd Regt (QORC) CA
Capt. J.C. Letcher — 5 Armd Regt (SCD) CA

JUDGE ADVOCATE

Major N. C. Fraser, ADJA — 5 Cdn Armd Div

The Order convening the Court, the Charge Sheet and the Summary of Evidence are laid before the Court.

The Court satisfy themselves as provided by Rules of Procedure 91 & 92.

The accused is brought before the Court.

Prosecutor - Lieut. J.M. Prescott - 5 Armd Regt (SHER) CA

Defending Officer - Lieut. R.W. Mitchell - Perth Regt (Motors) CA

The Order Convening the Court is read and is marked "C", signed by the President and attached to the Proceedings.

The names of the President and Members of the Court are read over in the hearing of the accused and they severally answer to their names.

The accused does not object to the President or the Members of the Court.

The President, Members and Judge Advocate are duly sworn.

The following Officers under instruction are duly sworn.

Lieut. G.S. Vass	5 Armd Regt (QORC) CA
Lieut. J.A.D. Thomson	12 Cdn Lt Fd Amb RCAMC
Capt. J.C. Cann	9 Armd Regt (SCD) CA
Lieut. T.A. Williams	8A Lt AA Bty RCA
Lieut. C.T. Blair	1st Fd Coy RCE
Capt. G.A. McEwen	5 Armd Regt (SHER) CA
Lieut. T.H. White	Perth Regt (M) CA
Lieut. J.R. Ferguson	2 Cdn Cav Bde RCAC.

The accused does not object to S 60931 A/Sgt. Finlay, W.C., 3rd Armd Regt (CCRC) CA, acting as Shorthand Writer.

The Shorthand Writer is sworn.

The accused answers his name and number and is arraigned on the charge. Charge-Sheet marked "D", signed by the President, and attached to the Proceedings.

PLEA - The accused pleads Not Guilty on all three charges.

The accused was asked the question at the foot of page 2 of A.F.A. 3 and his answer is recorded beneath the question.

U. 7

PROSECUTION

No opening address by the Prosecuting Officer.

1st Witness — Lieut. T. Anderson, Perth Rest (M) Co, having been duly sworn, is examined by the Prosecutor.

Q.1 Will you tell the Court you Rank, name and unit.
A.1 Lieut. T. Anderson, Perth Rest (M) Co.

Q.2 You know the accused, Pte Ryan?
A.2 I do.

Q.3 What were your duties on the night of 16 Oct 42?
A.3 I was Battalion Orderly Officer.

Q.4 Did you see the accused that night?
A.4 I did.

Q.5 Tell us what occured?
A.5 Upon investigating a disturbance in the lines, I found quite a few men making a lot of noise and the accused was a member of this party of men. He was ordered, with the rest, to return to their huts and go to bed. A few minutes later, I found the accused again a member of a party who were making quite a disturbance. They were again ordered to go to bed and this time I stated I was the Orderly Officer. One of the men amongst the party was then placed under close arrest. Upon this a group of men who were with him started a verbal argument. Ryan was amongst this party. The next thing I saw was Ryan and the others starting after Maden. Just before this, I was thrown to the ground and Ryan was amongst the group around me when this happened. I did not see Ryan again until Capt. Bullock and I entered the huts. The accused was approached by Capt. Bullock and he asked the accused if he was one of the party that was in the trouble in the lines. He said he was and Capt. Bullock told him to come with him and started to take him to the guard house. About twenty yards from the guard house Pte Ryan started an argument and I was ordered to send the men on personnel who were following us to return to their huts and to return to the Orderly Room myself.

Q.6 Did you see that these four men that were in this group resisted when the guard approached them?
A.6 Yes sir.

Q.7 Did they all resist?
A.7 It was a big fight and involved almost everyone who was around.

Q.8 You mentioned that you stated that you were the Orderly Officer. In what tone did you say this?
A.8 Having previously warned them, I used authority in my tone.

Q.9 Do you think that the accused would have heard it?
A.9 Very much so.

Cross Examination

Q.10 Mr. Anderson, did you know the accused prior to this evening?
A.10 No.

Q.11 How did you identify him if it was such a dark night?
A.11 I carried a flashlight and had him in the light more than once.

Q.12 You say that you twice ordered soldiers to go to bed. How did you direct that order? Did you direct it at any individual or to the whole party?
A.12 The men were directly in front of me and my words were meant for the whole party to go to bed.

Q.13 How many men were in the party?
A.13 Five to eight.

Q.14 How did you recognize the accused?
A.14 I had the light in his face.

Q.15 How many men were in the party?
A.15 Between five and eight.

Q.16 Do you mean were there five or eight?
A.16 At the most, I estimate.

Q.17 Would you say from their conduct that they had been drinking?
A.17 I would say from their conduct that they had been drinking.

Q.18 I would take it that it was after the second time you ordered them to go to bed that you encountered this resistance?
A.18 Yes.

Q.19 Who ordered anyone placed under arrest that night?
A.19 Shortly afterwards I ordered Mantrey placed under arrest.

Q.20 Did you place the accused under arrest?
A.20 No.

Q.21 Did anyone else place him under arrest?
A.21 Yesir. A verbal order was given to place all the men under close arrest after I had been thrown to the ground.

Q.22 At what particular time was Sgt Nolan with you?
A.22 No, he was in the vicinity.

Q.23 Did you see Sgt. Nolan struck?
A.23 No.

Q.24 On the occasion that you speak of when you ordered verbally all the men placed under arrest, had Capt. Sullivan arrived on the scene.
A.24 No sir.

Q.25 At that time, how many men were in the gathering?
A.25 Between five and eight.

Q.26 Quite a number of men all unaware?
A.26 Some were engaged and some were watching the fight.

Re-Examination

Q.37 When the verbal order was given to place all the men under arrest, could the accused hear that order?
A.37 It was shouted at the top of my voice.

Q.38 Where was the accused at that time?
A.38 Between ten and fifteen feet away.

Questions by the Judge Advocate

Q.39 You spoke of all the group fighting or struggling. Did you see just what Ryan did?
A.39 No sir.

Q.40 Could you see whether he was actually in it or not?
A.40 No sir, I wouldn't say definitely.

Q.41 Was the accused in front?
A.41 No sir, I do not remember.

Q.42 After the second or the order you were speaking of was the accused or the men under arrest?
A.42 Yes sir, that is correct.

Q.43 The order to go to bed or the order to arrest them?
A.43 After the order to place Pantrop under arrest had been delivered.

Q.44 Then there was a fight and you couldn't tell who was in it?
A.44 No sir.

Q.45 Did the second order to go to bed come after that?
A.45 Yes sir.

Q.46 You said you ordered all the men concerned to be placed under arrest?
A.46 Yes sir, they were more or less standing all a group.

Q.47 That, if anything, did you see Ryan do after that?
A.47 Nothing in particular sir, the fight covered quite a distance. Quite a few men were involved.

Q.48 If you didn't see him, how could you know Ryan was in it?
A.48 After I had been thrown to the ground I rolled away and shouted at the top of my voice to place those men under arrest to the guard.

Q.49 Did you see when Ryan left?
A.49 When the guard came.

Q.40 Do you know that all the men that were in that group were in the fight?
A.40 No sir. It was when I saw the guards couldn't control the fight that I got the Company Commanders of "A" & "C" Coys.

Q.41 Have you any reason to say that Ryan was in the fight other times when you saw him before it started?
A.41 It was only a few seconds.

Q.42 Would anyone have had an opportunity of leaving before the fight started?
A.42 No sir.

Q.43 Did you see when Ryan left?
A.43 No sir.

Q.44 When you returned with the Guard and Commander, had the four men disappeared?
A.44 Yes sir.

In the opinion of the Court and the Judge Advocate, it is not necessary to comply with R.P. 93 (3).

The witness withdrew

End Witness

A 11325 Sgt. Madon, L., "A" Coy, Perth Regt (M) GA, having been duly sworn, is examined by the Prosecutor.

Q.45 Will you tell the court you number, rank, name and unit.
A.45 A11325 Sgt. Madon, L., "A" Coy, Perth Regt (M) GA.

Q.46 Do you know the accused Pte Ryan?
A.46 Yes sir.

Q.47 Can you recognise him in this court-room?
A.47 Yes sir.

Q.48 Did you see him on the night of 16 Oct 42?
A.48 Yes sir.

Q.49 What was happening when you saw him that evening?
A.49 He was speaking to other men in No. 4 Platoon hut the first time I saw him.

Q.50 Was anything out of the way happening at that time?
A.50 Not at the time sir.

Q.51 Did you see him later?
A.51 Yes sir.

Q.52 Where was he then?
A.52 Outside with other men where the argument took place concerning the arrest of Pte Westrop.

Q.53 Will you explain just what Pte Ryan was doing when you first saw him?
A.53 I entered No. 4 Platoon Hut to call the roll. Pte Ryan was standing in the centre of the hut speaking rather loudly to other men. When he saw me enter the room he said "Isn't that right Sgt. Madon, when a man doesn't want a bath he give it to him". I could tell by his speech that he was under the influence of liquor. At that he left the room and then I noticed a man lying on the floor, Pte Whitehead. I went over to where he was thinking he was either sick or drunk and he told me of the trouble that had taken place.

Q.54 When you saw Ryan outside later, what happened then?
A.54 When I returned from the guard room I went down to "A" Coy lines and I heard quite a bit of noise.

Q.55 There was Ryan when you heard that noise?
A.55 Pte Ryan was not in sight then.

Q.56 You just heard voices. After that what happened?
A.56 I met the Orderly Officer, Mr. Anderson, and he gave me an order.

Q.57 Where was Pte Ryan when that order was given?
A.57 He was present.

Q.58 The order you got from Mr. Anderson, that was it?
A.58 To place Pte Westrop under arrest.

Q.59 What did the accused do then?
A.59 He stepped in front of me and told me not to interfere.

Q.60 Is that all that happened?
A.60 At that time, yes. He told me that I had better not interfere for my own benefit, because he didn't want to see me get into any trouble. In the course of the argument between Pte Ryan and myself, I heard an argument behind my back and saw Mr. Anderson on the ground. I went to his assistance, but Pte Ryan got in front of me and swung at me, but I was out of the way and didn't get hit. Some other lad swung at me, but I managed to push him away and he fell. He then grabbed on to my ankle before I could do much about it and Pte Ryan, Coggrove and Agnew came towards me, so I stepped on the arm hard to make him let go. I got away from him.

Cross Examination

Q.61 Sgt. Nadon, you have stated that Ryan was under the influence of liquor?
A.61 Yes sir.

Q.62 Was Ryan present with the gang when you were ordered to arrest Westrop?
A.62 Yes sir.

Q.63 You say that Ryan interfered with you?
A.63 Yes sir.

Q.64 What was he doing?
A.64 Stepped in front of me and told me not to interfere, he didn't want to see me get into any trouble.

Q.65 Didn't he say he was trying to keep Westrop out of trouble?
A.65 No sir.

Q.66 After that, did you at any time hear the order to arrest all those who were taking part?
A.66 No sir, not to me.

Q.67 You were there?
A.67 Not all the time. I left after the incident and went back to the guard room.

Q.68 When was that, immediately prior to Capt. Bullocks coming?
A.68 I wasn't there.

Q.69 How do you know that it was Ryan that swung at you?
A.69 He was in front of me and I had my flashlight in my hand.

Q.70 You say now that you are sure that the accused did swing at you?
A.70 Yes sir.

Q.71 How many men were around there?
A.71 I can't say for sure, but I think there were twelve orthirteen men.

17

Q.72 How many took a swing at you?
A.72 Two sir.

Q.73 Do you recall the taking of a Summary of Evidence, Sgt?
A.73 Yes sir.

Q.74 Do you recall making this statement "I turned around and saw Lieut. Anderson on the ground. As I turned around the accused took a swing at me".
A.74 He ran around in front of me. Everything was in a confusion and everybody was running around. He didn't want me to interfere.

Q.75 You were facing the accused and you turned around to go to Mr. Anderson's assistance?
A.75 Yes sir, I changed my position.

Q.76 You say Ryan took a swing at you?
A.76 Yes sir.

No Re-Examination

In the opinion of the Court and the Judge Advocate, it is not necessary to comply with R.P. 83 (3).

The Witness withdraws.

3rd Witness

M 65516 Pte. Byers, T.W. "C" Coy, Perth Regt (M) CA, having been duly sworn, is examined by the Prosecutor.

Q.77 What is your number, rank, name and unit.
A.77 M 65516 Pte Byers, T.W., "C" Coy, Perth Regt (M) CA.

Q.78 Do you know the accused Pte. Ryan?
A.78 No sir.

Q.79 Have you been with the unit long?
A.79 April of this year.

Q.80 But you don't know the accused?
A.80 No sir.

Cross Examination

Q.81 Where were you during the night of 16 Oct 42?
A.81 I was in the guard room.

Q.82 Did you see any disturbance in "A" Coy lines that night?
A.82 Yes sir.

Q.83 About what time?
A.83 About 2215 hrs.

Q.84 When you arrived at the place where the disturbance was going on, how many men were there?
A.84 At least thirty five.

No Re-Examination

In the opinion of the Court and the Judge Advocate, it is not necessary to comply with R.P. 83 (3).

The witness withdraws.

18.

4th Witness

A 11924 L/Sgt. Day, H.F. "G" Coy, Perth Regt (M) CA, having been duly sworn, is examined by the Prosecutor.

Q.85 What is your number, rank, name and unit?
A.85 A 11924 L/Sgt. Day, H.F. "G" Coy, Perth Regt (M) CA.

Q.86 Do you know the accused Pte Ryan?
A.86 Yes sir.

Q.87 Did you see the accused on the night of 16 Oct 45?
A.87 Yes sir.

Q.88 Where was he when you first saw him?
A.88 After I had ordered the guard to break up the fellows who were attacking Sgt. Hudson.

Q.89 Where was the accused at that time?
A.89 I found him beside me eventually.

Q.90 What was he doing?
A.90 At that time Ryan was trying to talk two of the accused into going to bed.

Q.91 Were you present when Mr. Anderson was knocked to the ground?
A.91 No sir.

Q.92 When did you arrive on the scene?
A.92 After Mr. Anderson had been knocked down, I think.

Q.93 Did you see any struggles at all during that time?
A.93 Yes, between two of the accused and two of the guards.

Q.94 That was the guard trying to do with the accused?
A.94 They were trying to place them under arrest.

Q.95 Why were they trying to place them under arrest?
A.95 They seemed to be the two ringleaders.

Q.96 What two accused did you see the guard fighting with?
A.96 Agnew and Cosgrove.

Q.97 Where was Pte Ryan then?
A.97 I don't know sir. He was there, but I only saw him once in a while. He was trying to talk the two accused into going to bed.

Q.98 You didn't see him trying to do anything else?
A.98 No sir.

No Cross Examination

No Re-Examination

In the opinion of the Court and the Judge Advocate, it is not necessary to comply with R.P. 85 (8).

The witness withdrews.

8th Witness

11486 Cpl. Hoover, H.E. 4th Inf. North Nova (A) Co., is also duly sworn, is examined by the Prosecution.

Q.99 What is your number, rank, name and unit?
A.99 All486 Cpl. Hoover, H.E. 4th Inf, North Nova (A) Co.

Q.100 Do you know the accused Pte Nunn?
A.100 Yes sir.

Q.101 What were your duties on the night of 10 Oct 42?
A.101 Acting Detention Orderly Sergeant.

Q.102 Did you see the accused on that night?
A.102 Yes sir.

Q.103 How close was he to Lieut Anderson when that order was given?
A.103 Possibly twelve or fifteen feet.

Q.104 Did you hear the order given?
A.104 Yes sir.

Q.107 In what sort of a tone was it given?
A.107 I don't remember.

Q.108 Was it loud or soft?
A.108 It wasn't soft.

Q.109 Did you have any difficulty in hearing it?
A.109 No sir.

Q.110 What happened after the order was given?
A.110 The guard then tried to place them under arrest. There was a struggle with some of the prisoners and we were unable to place them under arrest. They broke up and I returned to the Orderly Room.

Q.111 Did this assault stop?
A.111 Not that I remember sir.

Q.112 Did you know whether he did or didn't?
A.112 No sir, I didn't see his struggle with any of the guard.

No Cross Examination

No Re-Examination

In the opinion of the Court and the Judge Advocate, it is not necessary to comply with R.P. 85 (3).

The witness withdraws.

The Prosecution is closed.

RK. 23

The Defending Officer's Address in Mitigation of Sentence

With reagard to the second and third charge, I submit with regard to the second charge first. Mr. Anderson in his evidence states that he did not see what Pte Ryan did and he could not say whether Ryan was in the trouble or not. Evans states that there were at least thirty five men around. With regard to the second charge, I submit that it was been placed under the wrong sub-section of section 15. There is some evidence that he disobeyed an order, but I submit there is insufficient evidence to support a charge being laid under s (i). Mr. Dew in his evidence states that the accused was talking to two of the accused and trying to persuade them to go back, and I submit that their attitude towards the arrest of Taylor was not one of wilful defiance of authority, but to assist the trouble. For those reasons, I submit that the accused is not guilty of the second charge.

Decision on the application

The accused failed to obey an order, in that he swung at Sgt Madon and he tried to interfere with the carrying out of an order by Sgt. Madon. This, I think, shows a wilful defiance of authority.

The Court was closed for consideration of the Motion.

The Court allowed with the motion with regard to the third charge and disallowed it as to the second charge.

Finding on 3rd charge.

The Court was opened and the decision of the Court announced. The accused is found Not Guilty on the third charge. R.P. 45(C) is complied with. RK

FINDING

R.P. 40 (A) and (B) are complied with.

R.P. 40 (A) Note 2 is complied with.

The accused states that he does not desire to give evidence or to call witnesses as to character or to facts.

Closing Address by Prosecuting Officer

Sir, in summing up for the prosecution, in the first charge the charge is read as "Striking a Superior Officer" and as stated under 56, he may be found guilty of offering violence to a superior officer. The evidence of Sgt Madon shows that he did offer to strike him. Madon was in the execution of his duty and I submit that this evidence should be taken as the facts of the case and I therefore submit that the first charge is proven.

As regards the second charge, Lieut. Anderson definitely gave the accused an order and the accused must have heard the order. The accused failed to carry out that order and not only failed to carry it out, but he did it in such a way as to show wilful defiance of authority. He also attempted to interfere with the Sgt who was attempting to carry out Mr. Anderson's orders and I think that this is sufficient proof to show that he showed wilful defiance of authority.

Closing Address by Defending Officer

With reference to the first charge sir, the only evidence that in any way implicates Ryan, is that of Sgt Nadon and that took place during the general milling around. There is doubt in the evidence as to how many people were there and in some cases it was stated that there were five people there. In another case, it was stated that there were thirty-five. In the excitement in which Sgt Nadon must have found himself in, he may not know who the two persons were that attacked him. He quite probably decided that it was Ryan who swung at him and this is likely because Ryan was near him at the time. Sgt. Nadon says that when Ryan swung at him, he had turned away to Mr. Anderson and I submit that it would be impossible to strike Nadon under these circumstances. If he had turned to go to Mr. Anderson, I don't figure how Mr. Anderson could have struck him. I submit that this evidence is not sufficient to warrant a conviction on the first charge.

With reference to the second charge, it might be argued that Ryan was under the influence of liquor, but as to being under the influence, I submit that it was nothing like that. Sgt Day in his evidence says that the accused was talking to two other persons trying to get them to go to bed. Sgt Day didn't see any person take a swing at Sgt Nadon and Mr. Anderson says he did not see what Ryan did and he could not say whether Ryan was in it or not. I suggest that the second charge should be laid under Sec 9 (2).

The only evidence on the first charge is Sgt. Nadon's and Sgt Nadon says himself that he had turned away to go to the assistance of Mr. Anderson.

Judge Advocate

I would like to direct the direction of the Court to the provisions of A.A. 86 (4) (a), under which it states that if the evidence warrants it, a court may find a man guilty of a lesser charge of offering violence, but before following such a course, I would ask the court to fully examine the evidence. The only other observation I wish to make is in view of the first charge where Sgt Nadon is the only witness. You will find the question of there only being one witness and I refer you to MML para 45, which says that there only needs to be one witness, provided that the one witnesses evidence is believed. In the present case, it is legally permissable to make the findong on the one persons evidence. With reference to the second charge, I believe that the same observation is applicable, because to the best of my recollection, Lieut. Anderson was the only witness who testified specifically as to the order in question. However, although the Court may convict on the evidence, I would like to point out that the accused has the benefit of the doubt and where the charge is only supported by the evidence of one witness, the Court should be careful to scrutinize that evidence carefully and deliberately.

The Court is close for consideration of findings

FINDING

Finding on 1st and 2nd charges

The Court finds the accused A 11606 Pte Michael Joseph RYAN, The Perth Regt (M) Coy, guilty of the second charge, and on the first charge not guilty of "striking" but guilty of "When on active service offering violence to his superior officer in the execution of his office."

Evidence as to Character

Capt. R.J. Hutchison, Adjutant, Perth Regt (M) CA, having been duly sworn, stated: "I produce CPS 588, which I have compared with the Regimental Books and which is a true statement as to the character and particulars of service of the accused, and I also produce CPS 6, which is the Field Conduct Sheet of the accused, A 11606 Pte. Michael Joseph TRAH, Perth Regt (M) CA. (The documents are read by Capt. Hutchison, marked "A" and "B" respectively, signed by the President and attached to the Proceedings).

No Cross Examination

Plea for Leniency by the Defending Officer

[illegible] with regard to the first charge, I [illegible] to take [illegible] consideration that the accused was [illegible] and [illegible] did attempt to strike [illegible] the strength of [illegible] drunk. [illegible] there is [illegible] to the second charge. With regard to the second charge, I would like to bring up the question that the accused attempted to detain [illegible] and get them to their beds. That consideration should be shown, because since he is Nov 41, when he came over here, he has committed only two minor offences under Section 40 and the other one of neglecting to wear his respirator at 1000 hrs under Section 40.

The Court is closed for consideration of sentence

The Court sentences the accused, A 11606 Pte. Michael Joseph TRAH, Perth Regt (M) CA, to undergo detention for sixty (60) days.

Sentence Detn.for 60 days.

Certified a true record of this trial this 28th day of October 1942.

[signature] Capt. [signature] President [illegible] Major

Exhibit "J"

M.F.B. 355
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A 11505	Pte	RYAN Michael Joseph	Perth Regt (Motor) CA

1. The following is a fair and true summary of the entries in the ~~Regimental and Squadron, Battery~~ Service and General ~~Conduct sheets~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Army Act~~ Air Force Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For	Conduct to the Prej	1 times	Conduct to the prej	3 times
For		times		times
For		times		times
For		times		times

~~Number of instances of gallantry or distinguished conduct~~ -

~~or,~~

~~There are no entries in the conduct sheets of the accused.~~

~~Note:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.~~

2. The accused has not been previously convicted

~~or,~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act, and dispensations with trial under A.A. 76 are set out in the Schedule annexed to this statement.~~ Air Force Act A.F.A. 76

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for ..... beginning on the ..... day of .....~~

4. The accused has been in confinement awaiting trial on the present charges, for no days in civil custody, and 6 days in military custody, making a total of 6 days in custody, of which no days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 26 years 10 months 5 days

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 28 Sep 39

7. The service which the accused is allowed to reckon towards discharge is 3 years 25 days

8. The accused is entitled to reckon 3 years 25 days service for the purpose of determining his pension, etc.

9. ~~The accused is in possession of or entitled to no air force decoration or air force reward (or is in possession of or entitled to). State any air force decoration or reward~~ military military military

10. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of .....~~

30

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit, and in his regiment (or corps), the rank of ..... dated ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial ~~or civil court~~, of summary awards under Section 47 of the ~~Air Force~~ Army Act, and of cases in which trial has been dispensed with of accused, Number A-11525 Rank Pte

Name RYAN Michael Joseph of Perth Regt (Motor) CA Regiment

NOTE—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		NIL		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 23rd day of Oct 42 (E M Hutchinson) Capt Adjt Perth R

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

Sheet 1 - Destroyed, 28/3/40

No. A 11505 Name Ryan M.J. Sqn., Battery, or Company "A" Corps Perth Regt. (Motor) C A Date of enlistment 28/9/39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 19/1/41 No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 2. Signature O.C. Company, etc. Character

M.F.M. 6 A.F.B. 122 500M—11-40 (3625) H.Q. 1772-45-18

Place	Date of offence 1941	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order consequent with trial	By whom awarded	Remarks
Hamilton Ont.	5 Mar	Pte		Conduct to the prejudice etc., Disorderly conduct in Barracks. A.A. Sec 40.	P/S.Sgt. Ferguson W. RQMS Mogg G Sgt Christie L/C Logan L	28 days Detn	10Mar41	Maj RL Tindall A/C.O.	JET Adjt.
Camp Borden Ont	24 Jun	"		Conduct to the prejudice etc., Making an improper reply to an Officer. A.A. Sec 40.	Lt H Smith.	10 days Detn.	25 Jun41	Lt Col G.W. Little.	JET Adjt.
In the Fd.	16 Sep	"		Conduct to the prejudice etc., Absent off PT Parade AA s 40	Sgt Stone B	3 days C.B.	16 Sep	RS Reid Capt	
In the Fd.	30 Dec	"		Conduct to the prejudice (ie) Neglecting to put Respirators on at 1000 hrs A.A. Sec 40.	Cpl Handley J	2 days C.B.	31 Dec	EC Shelley Major	

Certified True Copy:

(E M Hutchinson) Capt. Adjt Perth R. (P.T.O.)

Ryan O.P. Spr. D-16200

142

10-R-193

10-R-193

143

142

see also 50'I

Hampton - A243-missing

19 Oct. 40.

PROCEEDINGS OF FIELD GENERAL COURT MARTIAL COURT

ACCUSED.

D-16200, Spr. Ryan, C.F. B-88586, Spr. Sharkey, J.J.

4th Canadian Field Coy. R.C.E.

The Prosecutor proceeds to call Witnesses.

First Witness for Prosecution.

Lieut. G.E. Smith, R.C.E. being duly sworn, is examined by the Prosecutor.

Question. You are an officer in the 2nd Canadian Field Park Coy. R.C.E.

Answer. "Yes"

Question. Will you tell the court what transpired between you and the accused on the morning of the 28th, of September, 1940. At what time did you see the accused. Where were they.

Answer. About twenty to nine on the morning of September 28th, a detail of about 15 Detentioners were digging slit trenches to the east of the Barrack Huts. I went there with Sgt. Sacks intending to get 4 men to dig up an unexploded bomb. The C.R.E's orders were to get the Detentioners to dig it up as no unexploded bomb has been known to go off after 7 days in the ground. I questioned the C.R.E. on this point and was reassured by him that there was little danger of the bomb going off as it had then been in the ground for 8 or 9 days. I was ordered to go ahead with it and I took Sgt. Sacks to the field and called all the detentioners over and told them about the bomb. I told them that the bomb had been there for over 7 days and told them that no bomb went off after 7 days. I then asked for 4 volunteers to dig up the bomb. No one volunteered. I then detailed a corporal to get 4 men. When he said "these four men", back chat started, I don't know from which of the 4 men, and questions such as "We don't have to do this do we, we're not criminals". I then ordered them to do it. Back chat started again and instead of arguing with them I marched them back to the detention barracks. I went down to the field stores to get some tools to dig the bomb up with and when I returned I told Sgt. Sacks to go and bring the men out. He went in and came out by himself. The men refused to come out. I went in and again explained to the 4 men that this bomb had been there 7 days and ordered them to do it. The men still refused, each separately. I told them it was disobeying an order and could lead to Court Martial. I asked them again and they all said no. I said, "I will give you an order and you will have to obey it, you 4 men follow me to the site of work now". I went to the site of the work and no one followed. I then reported it to the Officer Commanding.

The accused declined to cross examine this witness.

H. Penrose Major

Second Witness for Prosecution.

B-28007, Sgt. Sacks, W. R.C.E. being duly sworn, is examined by the Prosecutor.

Question. You are a Sergeant in the 2nd Canadian Field Park Coy. R.C.E.

Answer. "Yes Sir"

Question. Will you tell us what happened on the morning of 28th, of September, 1940.

Answer. As Provost Sergeant on that date, I was detailed to take charge of the working party of detentioners. Mr. Smith was the officer in charge. I was given to understand that detention men were to be given the job of digging up the bomb. I went to them and explained the job and asked for volunteers. There was no response. 4 men were then detailed. The first 4 men on the right. We then had the men returned to the detention barracks. We went for tools and then returned to pick up the 4 men. I went inside and told the men to come along and they refused. I explained again what the job was then Lieut. Smith came in and explained again and told them what it would mean if they did not come. We then left for the site of the work and no one came.

Question. How many men were there in the working party.

Answer. "About 12 or 14 sir".

Question. What was the method of detailing the men by the corporal.

Answer. "The first four men on the right".

The accused declined to cross examine the witness.

A Bennett Major

Defence.

Opening address by the Defence.
Lieut. R.C. Woolsey, R.C.E.

(The defence read over the charges against the accused) "It was the impression of the accused that the removal of this bomb constituted an illegal order, they thought that they had a right to refuse to obey such an order. A superior officer has no right to take advantage of his military rank to give a command not relative to military duty and a soldier is within his rights in disobeying such an order. As the field was only used as a car park and the bomb was not close enough to the Barracks to cause any damage to the personnel of the Unit, it is therefore thought that the removal of the bomb would not come under "Impeding military duties, etc.," The men had no training and were given no instructions as to how to go about the removal of this bomb. The point I am trying to bring out is that the removal of the bomb in question was not necessary. I maintain that the act of digging the bomb was not of military importance and that the command therefore could not be considered legal as the soldier has the right to refuse and therefore it was not wilfull defiance.

Re-Examination of Lieut. G.E. Smith, R.C.E.

Examined by Accused.

Question. "Lieut. Smith, what details were given the men? Four to dig, three more to carry timbers?

Answer. "All that were detailed were the 4 men".

Question. Were not these 4 men to dig down and others detailed to dig and carry timbers.

Answer. "I thought we might blow it down there and did not imply that the 4 men should carry it out. I did not imply what was to be done with the bomb when we got down to it". I thought the men were balking and just wouldn't do it".

Cross Examined by the Prosecutor.

Question. I would like to adk Mr. Smith if he would repeat the order that the men disobeyed, the way he gave it on the day of the occurrence.

Answer. "I do not remember the exact words now but I think that I said something like this. "You 4 men follow me to the site of work, now!"

Question to accused. Do you apply to give evidence yourself as Witness?

Answer. No.

Question. Do you intend to call any other witness in your defence

Answer. No.

A/Reeves Regn

Question. Have you anything to say in your defence.

Answer.
D-16200 Sgr. Ryan, G.P.

"I did not want to dig up the bomb because I thought I was unnecessarily endangering my life as the bomb was not hindering anything and therefore felt it was an illegal order. The men did not know what they were to do with the bomb. They thought they were to dig out, the bomb and dispose of it.

Answer.
W-[illegible], Sgr. Sharkey, J.J.

"The reason why I disobeyed the order was not with the intention of disobeying the order itself as it was given, but was because I understood that I had to dig up the bomb and carry it away. I thought that I might accidently strike the bomb with a pick or a shovel in the process of digging it out and cause it to go off. I was not worried about obeying the order but was worried about what the bomb would do".

Summing up, Prosecutor.

"It falls to me to point out that according to Mr. Smith's testimony he had received instructions from a higher authority and he went ahead prepared to do it. He gave an order to the men as he had been ordered to do. If it comes to a point of whether or not an order should be obeyed I distinctly refute the suggestion that the order was either illegal, ilegally given, or had any illegal object in being given.

The Court was closed for consideration of the finding.

The Court was re-opened, the Accused were again brought before it.

Evidence of Character.

M.F.M. 6, Field Conduct Sheets were produced as to character and particulars of service of the Accused.

The Accused declined to cross-examine.

Question to the Accused. Do you wish to address the Court.

Answer. No.

The Court was closed for the consideration of the Sentence.

CRIME.

R. C. E.
SQUADRON, BATTERY OR COMPANY

CHARGE against No. D-16200, Sapper, Ryan, C.P.

Place	Date of Offence	OFFENCE	Name of Witness	Punishment Awarded	By whom Awarded
London.	12-10-40	W.O.A.S. was A.W.L. from until.....apprehended at about 2325 hrs 12-10-40. gave himself up	Sgt Osborne, J.W. Canadian Provost Corps. L/Cpl Gillette, S. Canadian Provost Corps.		

MAJOR
A.P.M. CANADIANS
LONDON AREA

Service years
Number of good conduct badges
Date of last entry in company conduct book
Character
Date of last entry for an act of drunkenness
Number of cases of drunkenness within the last 12 months

Commanding.

M. F. B. 264
700m.—7-18.

Statement of evedence in the case of
D-16200, Sapper, Ryan, C.R.
Royal Canadian Engineers.

Sir: At London, on the 12-10-40. at about 2325 hrs while on duty at C.P.C.H.Q. L/Cpl Robinson, C.M.P. brought in the a/m soldier as absentee. He was charged with being A.W.L. and placed in the cells to be detained.

London.
12-10-40. J W Osborne .....Sgt

Sir:
I have read over and corroborate the above statement.

London.
12-10-40. S Gillette .....L/Cpl

CRIME. 2nd Cdn Fd Pk Coy., R.C.E., C.A.S.F.

SQUADRON, BATTERY OR COMPANY.

CHARGE against No. D 16200 Spr. Ryan, O.P. (4th Cdn Fd Coy., R.C.E.)

Place	Date of Offence	OFFENCE	Name of Witness	Punishment Awarded	By whom Awarded
In the field	28/9/40	A.A.Sec 9 (1) W.O.A.S. In that he, at approx 0900 hrs on 28 Sep 40 did not carry out the order of Lieut. G.E.Smith, R.C.E., "to follow him to the site of work.".	Lieut. G.E.Smith, Sgt. Sacks, W.	Remanded for Court Martial.	H. Bernard Lieut Col

Disobeying in such manner as to show a wilful defiance of authority a lawful command given personally by his superior officer in the execution of his office

Service years

Number of good conduct badges

Date of last entry in company conduct book

Character

Date of last entry for an act of drunkenness

Number of cases of drunkenness within the last 12 months

C.O. 2nd Cdn Fd Pk Coy., R.C.E., CASF. Capt.

Harold Bernard Lieut-Col Commanding.

C.R.E. 1st Can Div.

M. F. B. 264
750m — 7-18
H. Q. 1772-39-90.

CRIME.

2nd Cdn Field Park Coy. R.C.E. CASF.

~~SQUADRON, BATTERY OR~~ COMPANY.

CHARGE against No. D 16200 Spr. Ryan. O.P.

Place	Date of Offence	OFFENCE	Name of Witness	Punishment Awarded	By whom Awarded
In the Field	10/10/40	22 A.A. ~~22x121~~ W.O.A.S. When in confinement escaping, in that he on the night of 10 Oct-40, when in confinement (in the detention barracks) at Alderstead Heath, escaped. Gave escort as shown on ~~Apprehension by Escort~~ attached charge sheet) was returned to 1 Recpt depot on 18 Oct where he was picked up by transport of this coy.	L/Cpl. Thompson. H.H. Spr. Casselman. H.	Remanded for summary of Evidence and to the GOR Remanded to court Martial	Apprehension (Capt) W. Kennedy Lieut. Col

Service years

Number of good conduct badges

Date of last entry in company conduct book

Character

Date of last entry for an act of drunkenness

Number of cases of drunkenness within the last 12 months

Arnold Kennedy
Lieut. Col
R.C.E.

Confirmed — Capt.
C.O. 2nd Field Park Coy. R.C.E. CASF.

M. F. B. 264
700m—7-18
H. Q. 1772-39-90.

H. Brewer Maj

12

Quote No.....

CANADIAN MILITARY POLICE

LONDON AREA

CANADA

TELEPHONE: WHITEHALL 4465. EXT. 337.

30 Henrietta Street.
CENTRAL LONDON RECRUITING DEPOT.
GREAT SCOTLAND YARD.
Covent Garden, LONDON, S.W.1

Officer Commanding,
R.C.E. 9TH Fld Coy.
C.A.S.F.

RE:D-16200 Pte. Ryan,C.P.

1. Attached is charge form B-284 with reference to a/m.

2. Please advise what action is taken.

.....Capt.
for Major A.D.Cameron,A.P.M.

London
13-10-40

11

2nd Lt. O.C. Coy. R.C.E.

Passed on to you for your attention & necessary action please.

9TH FIELD COMPANY R.C.E.
C.A.S.F.
ORDERLY ROOM
[illegible]

[illegible]

First Witness for the Prosecution No. B28007 Sgt.Sacks.W. 2 Cdn Field Park Coy.R.C.E. States:-

In the Field on 28 Sept 40, At approximately 0900 hrs Lieut Smith detailed four men from the detention barracks to dig down to the unexploded bomb which is lying in the field bordering on the camp. The accused Spr Ryan whom I recognize was one of the four men. While Lieut Smith and I made further preparation, the four men were returned to the detention barracks to await our calling for them. On completion of the preparations Lieut Smith and I went to the barracks (detention) and I went inside to have the men brought out. When I ordered the men to get their tools and come out, each in turn told me that they refused to do the job. I explained to them that they were in no position to do so and then reported to Lieut Smith. Lieut Smith then came into the barracks himself and once again explained the job to be done and ordered them to follow him to the site of the ~~xmkx~~ works, he also explained to them that it was a court-martial charge to disobey. He then left the detention barracks and no men followed.

The accused declines to cross examine the witness

W. Sacks Sgt.

Second Witness for the Prosecution

Lieut G.R. Smith 2 Cdn Field Park Coy., R.C.E. states:-
In the Field on 28 Sept 40.

As instructed by Capt. E.W. Oddleifson C.O. 2nd Cdn Field Park Coy., R.C.E. this morning at approximately 0840 hrs I went to get a party of detentioners to dig up an unexploded bomb on Alderstead Heath. The detentioners were called over to me. I told them that there was an unexploded bomb which had been in place over seven days. I told them that no delayed action bomb was known to go off after seven days. I called for four volunteers, no one volunteered, then the four men on my right were detailed to do the work. There was some back talk and argument as to whether they had to do it. They were told that it was an order . There was further discussion at which I ordered a guard to fix his bayonet and get the four men moving. They went to the guard room where they were to meet me some minutes later. At approximately 0900 hrs I went ~~xit~~ with Sgt Sacks to the guard room to take the men to the site of work. Sgt Sacks went in, I remained outside. He presently returned saying the men were not coming. I went in and again explained to the men that the bomb had been in place over seven days, and that chances of it now exploding were negligible. I told them that it was an order for them to do the work. Each one of the four men separatley distinctly told me that they were going to disobey the order. I further explained the seriousness of disobeying an order and that it could lead to a court-martial. Each of the four men again separately, told me that they would not do it. I gave an order in words to this ~~eff~~ effect "You four men follow me to the site of the bomb, now". I then left the guard room with Sgt Sacks. None of the four men made a move to follow.

R.R. Reeves Major Continued

Summary of evidence in the case of No.1-2-3-4 Spr. Ryan, G.F. 4th Cdn Field Coy., R.C.E.

First Witness for the Prosecution

No. D28007 Sgt.Sacks.W. 2 Cdn Field Park Coy.R.C.E. States:-

In the Field on 28 Sept 40; At approximately 0900 hrs Lieut Smith detailed four men from the detention barracks to dig down to the unexploded bomb which is lying in the field bordering on the camp. The accused Spr Ryan whom I recognize was one of the four men. While Lieut Smith and I made further preparation, the four men were returned to the detention barracks to await our calling for them. On completion of the preparations Lieut Smith and I went to the barracks (detention) and I went inside to have the men brought out. When I ordered the men to get their tools and come out, each in turn told me that they refused to do the job. I explained to them that they were in no position to do so and then reported to Lieut Smith. Lieut Smith then came into the barracks himself and once again explained the job to be done and ordered them to follow him to the site of the ~~xmkx~~ works, he also explained to them that it was a court-martial charge to disobey. He then left the detention barracks and no men followed.

The accused declines to cross examine the witness

W. Sacks Sgt.

Second Witness for the Prosecution

Lieut G.E. Smith 2 Cdn Field Park Coy., R.C.E. states:-
In the Field on 28 Sept 40.

As instructed by Capt. E.W. Oddleifson C.O. 2nd Cdn Field Park Coy., R.C.E. this morning at approximately 0840 hrs I went to get a party of detentioners to dig up an unexploded bomb on Alderstead Heath. The detentioners were called over to me. I told them that there was an unexploded bomb which had been in place over seven days. I told them that no delayed action bomb was known to go off after seven days. I called for four volunteers, no one volunteered, then the four men on my right were detailed to do the work. There was some back talk and argument as to whether they had to do it. They were told that it was an order . There was further discussion at which I ordered a guard to fix his bayonet and get the four men moving. They went to the guard room where they were to meet me some minutes later. At approximately 0900 hrs I went ~~xit~~ with Sgt Sacks to the guard room to take the men to the site of work. Sgt Sacks went in, I remained outside. He presently returned saying the men were not coming. I went in and again explained to the men that the bomb had been in place over seven days, and that chances of it now exploding were neglible. I told them that it was an order for them to do the work. Each one of the four men separatley distinctly told me that they were going to disobey the order. I further explained the seriousness of disobeying an order and that it could lead to a court-martial. Each of the four men again separately, told me that they would not do it. I gave an order in words to this ~~aff~~ effect "You four men follow me to the site of the bomb, now". I then left the guard room with Sgt Sacks. None of the four men made a move to follow.

H.Brewer Major

Continued

Summary of evidence in the case of No.D-16200 Spr. Ryan. C.P. 4th Cdn Field Coy., R.C.E.

10

The accused declined to cross examine this witness

H C Smith Lt

2 Cdn Field Park Coy., R.C.E.

The accused having been duly cautioned in accordance with Rule of Procedure A (C), declines to make a statement.

Certified that rule of procedure A(C)(D)(E)(F) and(G) have been compiled with.
Taken down by me in the presence of the accused this 28 day of September 1940. In the Field.

H H Bayne Lieut.

H Bruce Major

No. D16200 Name RYAN O.P. Sqn., Battery, or Company 4 Fd Coy Corps R.C.E.

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Date of enlistment | G.C. Badges | Service or Proficiency Pay | Sheet No. 2. | Signature O.C. Company, etc.

M.F.M. 5
A.F.B. 122
(6) 31—8—39 (70a)
H.Q. 1772-43-10

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
ALDERSHOT	19 June 40	Spr		W.O.A.S.-A.W.O.L. from 2200 hrs. 19 Jun 40 to 2200 hours 8 Jul 40 (Absent 20 days)A.A.15 (1)	Cpl.McGuire Sgt.Stevenson L/S.Bennett	Forfeits 40 days pay 20 days:-A.A.46(2)(d) Auth F.R.& I. 149 (1) (a)	11 Jul 40.	E.C. Thorne Capt RCE 4 Cdn. Fd. Coy.	
Brigade Camp	21 Aug. 40	Spr		W.O.A.S.-A.W.O.L. in that he failed to appear at the place of parade appointed by his C.O. Namely:-Marching Out parade. A.A. 15 (2)	L/S. Bennett Sgt. Stevenson	168 hours DETENTION 20 days:-F.R. & I. 149 (1) (a)	21 Aug 40	H.F. Seymour Maj RCE O.C. 4 Cdn Fd Coy	

P.T.O.

Place	Date of offence	Rank	Cause of detention/ hrs	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Brigade Camp.	13 Sep 40	Spr		W.O.A.S.-A.W.L. from 2200 hrs. 13 Sep 40 to 1400 hrs 19 Sep 40 (Abs. 5 days & 1½ hours) A.A. 15 (1)	L/C.Hamilton L/S.Bennett	14 days DETENTION	19 Sep 40	R.J. Cassidy Capt. RCE O.C. 4 Cdn Fd Coy	
Field	10 Oct. 40	Spr		1. W.O.A.S. A.A. 22 When in confinement escaping in that he on the night of 10 Oct 40 when in confinement (in the detention barracks) at Alderstead Heath escaped. 2. W.O.A.S. A.A. 9 (1) Disobeying in such manner as to show a wilful defiance of authority a lawful command given personnally by his superior officer in the execution of his office.	L/C Thompson H Spr Casselman H	112 days DETENTION	19 Oct 40	F.G.C.M.	

Statement by the accused # D.16200 Spr. RYAN, O.P.

"I desire to have an Officer appointed by the Convening Officer to represent me at the trial."

.....

Lt G Worboys 4 Fd Coy RCE

Summary of evidence in the case of D16200 Spr. Ryan, O.P.
4th Field Coy. R.C.E. CASF.

First Witness for the Prosecution. B28161 L/Cpl. Thompson, H.H., 2nd Cdn Field Park Coy. R.C.E. states:-

I was Cpl. of the guard on 10th Oct.-40, when I took over my duties everything was as it should have been. When I changed the guard at 0200 hrs, 11 Oct.-40 the prisoners were there. At 0400 hrs everything was quiet. At 0600 hrs when I went to awaken them I found that Spr. Ryan and Spr. Sharkey had escaped. I reported it to C.S.M. Woodmark, who then brought Lieut. Bayne. H. H. to where I was and I explained the details to Lieut. Bayne.

The accused, declines to cross examine the witness.

Harold H. Thompson Cpl

2nd Witness for the Prosecution C2325 Spr. Casselman, H. 2nd Field Park Coy. R.C.E. states:-

I was one of the first men to go on piquet when it was mount at 1800 hrs. I came off at 2000 hrs. I went over to the detention barracks and stayed with the prisoners until about 2340 hrs, whe when I got ready to go back on piquet again. I was then on piquet ~~xxxix~~ from 2400 hrs. till 0200 hrs. When I came off I was cold and wet, and tried to get some sleep in the guard room, and don't think I went to sleep but might have dozed. I heard L/Cpl. Thompson arousing to go on guard at 0400 hrs. I knew nothing of the escape till I was to go on at 0600 hrs.

The accused declines to cross examine the witness.

H. H. Casselman

The accused having been duly cautioned in accordance with Rule of Procedure 4 (E) declines to make a statement.

Certified that Rule of Procedure (A) (D) (C) (E) (F) and (G) having been complied with.

Taken down by me in the ~~xxxxxxx~~ presence of the accused this 16th day of Oct.-40, In the Field.

D E Sweet Lieut

W. Bruce Major

50 I.

REGIMENTAL DOCUMENTS

H.Q. FILE No. .....

NAME Sgt. RYAN O.P. REGIMENTAL No. .....

UNIT OF ENLISTMENT ..... RANK .....

CONTENTS	NON-EFFECTIVE BY
COMBINED DECLARATION FORM OR ATTESTATION AND MEDICAL HISTORY (M.F.M.1 & 1A) OR (M.F.M.2 & 2A)	DEATH
SERVICE AND CASUALTY FORM (M.F.M.4 & 4A) (A.F.B.103)	DATE
PARTICULARS OF FAMILY (M.F.M.5)	CAUSE
FIELD CONDUCT SHEET (M.F.M.6) (A.F.B.122)	AUTHORITY
CERTIFICATE OF SERVICE (M.F.M.8) COPY OF, OR DISCHARGE CERTIFICATE (M.F.M.7) COPY OF	
FORM OF WILL (M.F.M.10 OR M.F.M.10A)	
DENTAL HISTORY SHEET	DISCHARGE
MEDICAL REPORT OR CASE HISTORY SHEET	DATE
MEDICAL EXAMINATION ON LEAVING THE SERVICE	REASON
TRANSFER CLOTHING STATEMENT	AUTHORITY
LAST PAY CERTIFICATE (M.F.D.930A)	
PROCEEDINGS ON DISCHARGE	
PROCEEDINGS COURT OF ENQUIRY	DESERTION
DECLARATIONS COURT OF ENQUIRY	DATE
PAY SHEETS	AUTHORITY
CARDS	
SUNDRY	

M.F.W.3060

D.16200 Spr. Ryan, O.F.
NO.1 Con. Eng. R.U.

Correspondence to be PINNED here.

Army Form A.3.

501

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this 21st day of May, 1942.

Whereas it appears to me, the undersigned, an officer in Command of "B" GROUP CANADIAN REINFORCEMENT UNITS, CANADIAN ARMY OVERSEAS. , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable that a Court to consist of Officers of a higher rank should be assembled~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers ~~named~~ appointed or detailed hereunder

* Omit if not applicable.

*~~I am unable to appoint~~—

*~~(1. Three Officers to form the Court.)~~

*~~(2. A Field Officer as President.)~~

*~~(3. Three Officers having more than Years' service.)~~

~~for the following reasons, namely:—~~]

PROCEEDINGS REVIEWED.

Reviewing Officer's Rank, Name & Unit

Date

President.

Rank.	Name.	Regiment.
Major	R.H.PERRY (Lincoln & Welland)	#1 C.G.H.U.

Members.

Rank.	Name.	Regiment.
A Captain	from	1 Cdn. A.S.C.R.U.
A Lieutenant	from	1 Cdn. ENG.R.U.

Waiting Member
A Captain from 1 Cdn. R[illegible] R.U.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

**Signed* BRIGADIER

Commanding "B" GROUP CDN. REIN. UNITS.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D.16200 SPR. RYAN, O.P. #1 Cdn. Eng. R.U.	First Charge. A.A. Sec. 15(1) See charge sheet attached.	Guilty	Guilty 3 months Detention Stoppage $24-79	Confirmed [illegible] Brigadier [illegible]

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) [illegible] BRIGADIER (Signed) [illegible]
Commanding "B" GROUP CDN. RUIN. UNITS. President.
Convening Officer (c)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 22nd day of May 42, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) N/A
*(4. ~~The officers under instruction~~) N/A

were duly sworn.

* Omit if not applicable.

Signed this 22nd day of May 1942

[illegible]
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*I direct that the soldier named in the margin be not committed to prison until further orders.~~ N/A

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 26th day of May 1942

[illegible] Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of D 16200 Spr Ryan O.P.

(a) (Dated) 29 May 1942 (Signed) [illegible] Adjt.
1 C. Eng. R.U.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible]

Bz 1811

CHARGE SHEET

The accused, D-16200 Sapper Owen Patrick Ryan, No.1 Cdn. Engineer Reinforcement Unit, a soldier of the Canadian Army (Overseas) is charged with:

First Charge
Sec. 15(1)
Army Act

WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

at Guillemont Barracks, Cove, Hants., absented himself without leave, at 2359 hrs. on the 30th day of November, 1941 until he surrendered himself to the Provost Coy. C.A.S.F. M.D. No.7 at 0905 hrs. on the 14th day of February 1942, thereby incurring costs of apprehension amounting to $24.79.

(S.H.WHYTE) Colonel, R.C., V.D.,
Commanding Officer,
No.1 Cdn. Eng. Reinf. Unit,
Cdn. Army (Overseas)

Cove, Hants.,
19th May 1942.

To be tried by Field General Court Martial

(A.E. [illegible]ASH) BRIGADIER
GROUP COMMANDER
"B" GROUP CANADIAN REINFORCEMENT UNITS.

H.A.P.

MEDICAL CERTIFICATE.

R.A.M.C. (Regt.) June 1917.

I certify that I have this morning examined

No. D/62220 ...Pte... Ryan. C.R.....

of. A.V.C. Cam Engl. R. Unit. and in my opinion he

is fit to undergo Trial by Court Martial.

Station....Leave.....

Date....22-5-42.....

....Medical Officer.

B. Bak

Evidence taken down at the trial by F.G.C.M. of D-16200 Spr. Ryan, O.P. #1 C.E.R.U. Canadian Army, on active service Overseas, held at Cove, Hants., 12 May 42.

The Order convening the Court (R.P.105)(1) the charge sheet(R.P.108) (2) and the Summary of Evidence (3) are laid before the Court. (R.P.22(A)).

The Court complies with Rs.P. 22 and 23.

The accused and all persons including all witnesses (5) are now brought in (R.P.20)

Prosecutor: Lt. H.C. Baker, R.C.E.

Defending Officer: Lt. H.G. Hess, R.C.E.

Medical Certificate is laid before the Court by the Prosecutor.

The convening Order is read by the President to the accused.

The President & members of the Court answer to their names.

Q. Do you object to be tried by me as President or by any of the officers whose names you have heard read?

A. No Sir.

The President & members are duly sworn.

The Court is constituted as follows President Major, R.H. Perry, M.C., No 1 C.G.R.U. Members Capt. L.A. Gemmill, No 1 C.A.S.C.R.

Lt. W.K. Lye, No 1 C.E.R.U.

The Charge Sheet is signed by the President and annexed to the proceedings.

The accused is arraigned upon the charge in the a/m charge sheet.

Q. Are you guilty or not guilty of the charge against you which you have heard read?

A. Guilty, Sir.

R.P.35 (B) is complied with in respect to the charge.

The Summary of Evidence is read, signed by the President and annexed to the proceedings.

The Prosecutor Lt. H.C. Baker, R.C.E. is duly sworn.

Q. Have you any evidence to produce as to the character and particulars of service of the accused?

A. I produce A.F.B.296 & certified copy of M.F.M. 6.

A.F.B. 296 is marked, signed by the President & annexed to the proceedings.

Q. Is the accused person named in the statement which you have read?

A. Yes, Sir.

Q. Have you compared the contents of the above statement with the Regimental Books.

A. Yes, Sir.

Q. Are they true extracts from the Regimental Books (and is the statement of entries in the conduct sheets a fair and true summary of these entries.

A. Yes Sir.

Q. Have you any other evidence?

A. I produce M.F.B. 1481, certificate in accordance with Order in Council P.C. 58/4015 d/ 5 Jun 41.

Record of the Declaration of a Court of Inquiry held on 23 Dec 41

Certificate in accordance with Sec. 163 (1) (m) of the Army Act, M.F.B. 264.

The accused declines to cross examine this witness.

Q. Do you wish to address the Court in mitigation of sentence?

A. Yes, Sir. I have been in the Field, was reverted and returned here for basic training which I didn't think necessary. I was contented in the Field. I was fed up to have to do this training all over again, I went absent, realized the mistake I made and surrendered myself as soon as I possibly could.

The Defending Officer,

I want to point out that the accused on A.W.L. did not go out on a drinking spree but rather returned to see his wife and family. This being duly accomplished he surrendered himself to the authorities. The Court will please take cognizance that he has been in custody since 14 Feb 42.

The accused declines to give evidence as to character.

The Court is closed for the consideration of the sentence.

C 1871

SUMMARY OF EVIDENCE

Summary of Evidence in the case of D-16200 Sapper Owen Patrick Ryan, No.1 Cdn. Engineer Reinforcement Unit, a soldier of the Canadian Army (Overseas)

Evidence taken on oath by order of Colonel G.H.Whyte, M.C., V.D., Commanding Officer, No.1 Cdn. Eng. Reinf. Unit.

FIRST WITNESS: Lieut. G.D.Gibson, No.1 Cdn. Eng. Reinf. Unit, being duly sworn, states;

I am Records Officer, No.1 C.E.R.U.. I produce the following documents, which, I have satisfied myself, refer to the accused;

A. M.F.B. 1481 Certificate in accordance with Order-in-Council P.C. 58/4015 d/5 Jun 41.

B. Record of the Declaration of a Court of Inquiry, held on 23rd. day of December 1941.

C. Certificate in accordance with Sec. 163 (1) (m) of the Army Act.

D. M.F.B. 264 and Statement of Evidence .

G.D.Gibson Lieut. Lieut.

The accused declines to cross-examine this witness.

The accused after being cautioned in accordance with R.P. 4(E) declines to make a statement, reserving his defence.

Certified that R.P. 4 (C) (D) (E) and (F) have been complied with.

Taken down before me in the presence and hearing of the accused at Guillemont Barracks, Cove, Hants., this 18th day of May 1942.

Harvey D.Baker Lieut. R.C.E.
(H.C.BAKER) Lieut. R.C.E.
No.1 Cdn. Eng. Reinf. Unit
Cdn. Army (Overseas)

ABSENTEES AND DESERTERS

Original

M.F.S. 1481

CERTIFICATE IN ACCORDANCE WITH ORDER-IN-COUNCIL P.C. 58/4015 DATED JUNE 5th, 1941, AS PUBLISHED IN CANADIAN ARMY ROUTINE ORDER 1099, 1941.

(Transportation Only)

I, ...Lieutenant.....J.W. du Manoir.....R.C.A.S.C.....

hereby certify that I issued the hereinafter itemized transportation for escort to proceed

From Fredericton, N.B. To Riviere du Loup, P.Q.

And Return to Fredericton, N.B. for the purpose of

escorting D-16200, Spr. Ryan, D.P., No.7 District Depot

alleged to be a deserter or absentee without leave, the facts, date and particulars of (transport warrants issued) (the transportation required) and the cost thereof for said soldier and escort being as follows:--

PARTICULARS	COST
Transport Warrant No.A74828, providing one second-class return fare Fredericton to Riviere du Loup and three meal tickets at .75¢ each.....	$17.27
Transport Warrant No.A74829 providing one single second-class fare Riviere du Loup to Fredericton, N.B.....	7.52
Total	$24.79

Dated at Fredericton this 27th day of March A.D., 1942

J.W. du Manoir Lieut.,
Issuing Officer (RCASC)

Certificate to be completed by Officer who issued or authorized the transport warrants or transportation for the return to his corps unit or station of a soldier alleged to be a deserter or absentee without leave and of the escort for said soldier.
Transportation Only.

CERTIFICATE IN A CHARGE UNDER

SEC. 163 (1) (m) OF THE ARMY ACT

I certify that the person whose description is given below was arrested (or surrendered) at.....
Saint John N.B. at 0905 hrs., on the 14/2/42.
xxxxxx

Number...D16200.....
Rank.....Sapper.....
Name.....Ryan O.P.....
Unit.....1st Divn. 4th Field Coy. R.C.E.

Description:

Age.....
Height...5.ft.6".....
Complexion.....
Hair.....
Eyes.....Blue.....
Marks.....

Signature of Officer or Police in charge of Station where the above named person.....Sgt.Merritt.D.F.....
was, when in custody on arrest.

Signature.....

CANADIAN Provost Corps C.A.S.F. M.P. D. No. 7

CRIME

1st Divn. 4th Field Coy. R.C.E.

SQUADRON, BATTERY OR COMPANY

CHARGE against No. D16200 Spr. Ryan O.P.

Place	Date of Offence	OFFENCE	Name of Witness	Punishment Awarded	By whom Awarded
Armouries	0905Hrs	A.W.L.			
Saint John N.B.	14/2/42	Sec. 15 A.A.			

Service years

Number of good conduct badges

Date of last entry in company conduct book

Character

Date of last entry for an act of drunkenness

Number of cases of drunkenness within the last twelve months

(Thos.E. Guy) Major, ... Commanding
O.C. No. 17 Provost Company, (CA)

M. F. B. 264

2000—6-4 (1879-3)
H.Q. 1772-39-99

I 1941

Army Form B 115

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier

Record of the Declaration of a Court of Inquiry assembled at Guillemont Barracks, Cove, Hants., on the 23rd. day of December 1941, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. D-16200, Spr. Ryan, O.P., No.1 Cdn. Eng. Reinf. Unit, a soldier of the Canadian Army (Overseas)

DECLARATION

The Court declare that D-16200 Spr. Ryan, O.P. of No.1 Cdn. Engineer Reinforcement Unit, C.A.(OS)., illegally absented himself without leave, at Guillemont Barracks, Cove, Hants., at 2359 hrs. on the 30th day of November 1941 and that he is still so absent and that on the 23rd. day of December 1941, he was deficient and that he is still deficient of the following as shown in Appendix "A" (attached) to the value of £8-13-3½

Article	Def.	Value
Anklets, web	1	£0 - 4 - 4
Battle Dress, Serge, Blouses	1	1 2 6
" " " Trousers	1	1 0 6
Boots, ankle, prs.	1	1 2 6
Braces, prs.	1	0 1 6
Greatcoat, dismounted	1	2 8 6
Comb.	1	0 0 2
Gloves, woolen, prs.	1	0 1 11
Jacket, sweater	1	0 8 6
Blouses, denim	1	0 12 9
Socks, worsted, prs.	3	0 5 9
Spoon, table	1	0 0 4½
Brushes hair	1	0 2 6
Bags ration	1	0 0 2½
Covers, messtin	1	0 0 3
Slings, rifle	1	0 1 3
Respirator, complete	1	0 19 0½
Wallet, A/C.	1	0 0 9
		£ 8 13 3½

Signed at Guillemont Barracks, Cove, Hants., this 24th day of December 1941

President	E.A.Ballantyne	Lieut. R.C.E.
Members	J.A.Miller	2/Lieut. R.C.E.
	S.W.Keston	2/Lieut. R.C.E.

Concurred in:- L.P.Barnes Lt.-Col., R.C.E.
Commanding Officer
No.1 Cdn. Eng. Reinf. Unit
C.A.(OS)

CERTIFIED TRUE COPY
M.B.68:-

Dealt with by C.O. R.M.P.

..... A/Adjt.
1 C. Eng. R.U.

CRIME

1st Divn. 4th Field Coy. R.C.E.

SQUADRON, BATTERY OR COMPANY

CHARGE against No. D16200 Spr. Ryan O.P.

Place	Date of Offence	OFFENCE	Name of Witness	Punishment Awarded	By whom Awarded
Armouries	0905Hrs	A.W.L.			
Saint John N.B.	14/2/42	Sec. 15 A.A.	Sgt Merritt D.F.		

Service years

Number of good conduct badges

Date of last entry in company conduct book

Character

Date of last entry for an act of drunkenness

Number of cases of drunkenness within the last twelve months

(Thos.E. Guy) Major. Commanding
O.C. No. 17 Provost Company, (CA)

M. F. R. 264

800m—5-4 1572-33
H.Q. 1772-39-09

DOCUMENTARY EVIDENCE.

While in Charge of the St. John Armoury Guard Saint John, N.B. on the morning of the 14/2/42. at 0905 Hrs. Spr Ryan O.P. came into the Guard Room with his wife and Rev. Mr. Morrissey. He told me he was A.W.L. from his Unit in England. and he was giving himself up. I placed him under Arrest and placed him in the Guard Room Saint John, N.B. and reported it to No. 17 Provost Company, (CA) Saint John, N.B.

Sgd. Sgt Merritt D.F.

Certified True Copy:

Major,

Thos.E. Guy,
O.C. No. 17 Provost Company, (CA)

I 161

Army Form B 115

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier

Record of the Declaration of a Court of Inquiry assembled at Guillemont Barracks, Cove, Hants., on the 23rd. day of December 1941, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. D-16200, Spr. Ryan, O.P., No.1 Cdn. Eng. Reinf. Unit, a soldier of the Canadian Army (Overseas)

DECLARATION

The Court declare that D-16200 Spr. Ryan, O.P. of No.1 Cdn. Engineer Reinforcement Unit, C.A.(OS)., illegally absented himself without leave, at Guillemont Barracks, Cove, Hants., at 2359 hrs. on the 30th day of November 1941 and that he is still so absent and that on the 23rd. day of December 1941, he was deficient and that he is still deficient of the following as shown in Appendix "A" (attached) to the value of £8-13-3½

Article	Def.	Value £	s	d
Anklets, web	1	0	4	4
Battle Dress, Serge, Blouses	1	1	2	6
" " " Trousers	1	1	0	6
Boots, ankle, prs.	1	1	2	6
Braces, prs.	1	0	1	6
Greatcoat, dismounted	1	2	8	6
Comb.	1	0	0	2
Gloves, woolen, prs.	1	0	1	11
Jacket, sweater	1	0	8	6
Blouses, denim	1	0	12	9
Socks, worsted, prs.	2	0	5	9
Spoon, table	1	0	0	4½
Brushes hair	1	0	2	6
Bags ration	1	0	0	2½
Covers, messtin	1	0	0	3
Slings, rifle	1	0	1	3
Respirator, complete	1	0	19	0½
Wallet, A/G.	1	0	0	9
		£ 8	13	3½

Signed at Guillemont Barracks, Cove, Hants., this 24th day of December 1941

President E.A.Ballantyne Lieut. R.C.E.
Members J.A.Miller 2/Lieut. R.C.E.
S.W.Keston 2/Lieut. R.C.E.

Concurred in:- L.F.Barnes Lt.-Col., R.C.E.
Commanding Officer
No.1 Cdn. Eng. Reinf. Unit
C.A.(OS)

CERTIFIED TRUE COPY
M.B.68:-

Dealt with by C.O. 24/12

Adjt.
1 C. Eng. R.U.

LIST OF WITNESSES

List of Witnesses in the case of D-16200 Sapper Owen Patrick Ryan, No.1 Cdn. Eng. Reinf. Unit, a soldier of the Canadian Army (Overseas)

For the Prosecution

Lieut. G.D. Gibson, No.1 Cdn. Eng. Reinf. Unit

For the Defence

Nil.

LIST OF EXHIBITS

List of Exhibits in the case of D-16200 Sapper Owen Patrick Ryan. No.1 Cdn. Eng. Reinf. Unit, a soldier of the Canadian (Army (Overseas)

A. M.F.B. 1481 Certificate in accordance with Order in Council P.C. 58/4015 d/ 5 Jun 41.
B. Record of the Declaration of a Court of Inquiry held on the 23rd. day of Dec 41
C. Certificate in accordance with Sec 163 (1) (m) of the Army Act.

I, THE UNDERSIGNED REQUEST THAT AN OFFICER BE PRESENT TO REPRESENT ME AT MY TRIAL.

I REQUEST THAT Lieut Hess OR _____

REPRESENT ME IF POSSIBLE

Sgt Ryan C.

E. R.A.O.

MFM 6 (A.F.B. 122)

NoD-16200 Name RYAN, O.P. | Sqn., Battery or Company: 4 Fd. Coy. R.C.E. | Corps | Date of enlistment: 3-9-39 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot	19 Jun 40	Spr.		WOAS-AWL- from 2200 hrs. 19 Jun 40 to 2200 hrs. 8 Jul 40 (Abs. 20 dys) A.A.15(1)	Cpl. McClure Sgt. Stevenson L/Sgt. Bennett	F'fts 40 dys pay. 20 dys. AA 46(2)(d) Auth. FRI 149(1)(e) 20 dys. - FRI 149 (1) (a)	11 Jul 40	E.C. Thorne, CAPT. RCE 4th Cdn. Fd. Coy	
Brigade Camp	21 Aug 40	Spr.		WOAS- AWL-in that he failed to appear at the place of parade appointed by his C.O. Namely Marching Out Parade AA 15(2)	L/s Bennett Sgt. Stevenson	168 hrs. Detn.	21 Aug 40	H.F. Seymour Maj. RCE OC 4 Cdn. Fd. Coy.	
Tregantle	13 Feb 41	Spr.		A.A.15(1) AWL- from 2359 hrs. 13 Feb 41 to 0900 hrs. 18 Feb 41 (Absent 105 hrs. 1 min.)	Documentary	Returned to Unit	17 Feb 41	J.L. Lt.-Col.	F'fts. 3 dys pay FRI 149

(P.T.O.)

CERTIFIED TRUE COPY:-

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Brigade Camp	13 Sep 40	Spr.		WCAS-AWL-from 2200 hrs. 13 Sep 40 to 1400 hrs. 19 Sep 40 (abs. 5 dys 16 hrs.) A.A.15(1)	L/C Hamilton L/S Bennett	14 dys Detn.	19 Sep 40	RJ Cassidy Capt. RCE OC 4th Cdn. Fd. Coy.	
Field	10 Oct 40	Spr.		1. WCAS- AA 22 When in confinement escaping in that he on the night of 10 Oct 40 when in confinement in the detention barracks at Aldershot Heath escaped	L/C Thompson H Spr. Casselman H	112 dys Detn.	19 Oct 40	F.G.C.M.	
				2. WCAS-AA 9 (1) Disobeying in such a manner as to show a wilful defiance of authority a lwaful command given personally by his superior officer in the execution of his office					

Released from the Detention Barracks - Aldershot on 1 Jan 1941 Sentence having expired. Remission earned under "Rules for Detention Barracks and Military Prisons 3" dys. Commandants Initials ????????

CERTIFIED TRUE COPY:- Harry A. Baker Lieut R.C.E.

No. D-16200 Name RYAN O.P. | Sqn., Battery or Company: No.1 Cdn. F.H.U. Corps | Date of enlistment | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 132)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. B.H. Darwin Maj. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon	17 Mar 41	Spr.		A.A.15(1) AWL- 17 Mar 41 to 17 Mar 41 (Abs 13 hrs. 55 mins)	Documentary	27 days Detn.	18 Mar 41	Lt-Col. I.B Ramsay	F'fts 1 dy pay PRI 149 (1)(e)
				Released form the Detention Barracks /Witley- on Apr 10 1941 Sentence having expired Remission earned under "Rules for Detention Barracks and Military Prisons 3 days Commandants Initials ??????					
Field	17 Sep 41	Spr.		A.A.15(1) AWL- from 2359 hrs. 17 Sep to 18 Sep 41 (0800 hrs.) (Abs. 8 hrs. and 1 min.)	CSM Murdock	Reverts Spr.	19 Sep 41	RJ.Cassidy Major	F'fts 1 days pay PRI
Field	20 Sep 41	Spr		AA.15(1) AWL- from 2359 hrs. 20 Sep 41 to 0800 hrs. 15 Oct 41 (abs 24 dys 8 hrs.)	Sgt.Liberty	14 dys CB Deprived of 28 dys pay PRI 149 (1)(e)	16 Oct 41	RJ.Cassidy Major	F'fts 25 dys pay PRI

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				S.O.S. to No.1 E.H.U. 14 Nov 41 M.F.M. 6 verified to date J.S.Osborne Lieut. 4TH Field Coy., R.C.E.					
				CERTIFIED TRUE COPY:- Harvey A Baker Lieut R.C.E.					

No. D-16200 Name RYAN, C.P. Sqn., Battery, or Company 4th Fd. Coy. Corps Stat. Div. R.C.E. Date of enlistment G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 10M—8.43 (7502) H.Q. 1772-43-18

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 3 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Frederic-ton, N.B.	19-3-42	Spr.		(1) When in confinement escaping in that he at Fredericton, N.B. on the 9th day of March 1942 at 1915 hrs. escaped from the Detention Barracks, No.7 Dist. Depot, C.A. Sec.22(A.A.)	Cpl. Currie C.B.	Forfeits 10 days' pay FR&I 149(1)(A)		Lt.Col. W.A. McDougall M.C.	
				(2) A.W.L. Sec.15(1)(A.A.) From: 1915 hrs. 9-3-42 To: 1000 hrs. 19-3-42 0 days 14 hrs. 45 min.	Documentary	Forfeits 12 days' pay under FR&I 149(1)(c)(ii) 14 days' Detention			
				Close Arrest: 12 days 1 hr.					

CERTIFIED TRUE COPY Harvey A. Baker Lieut A.D.C.

(P.T.O.)

D Det. -

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

D-16200 Sapper Owen Patrick Ryan of the No.1 Cdn. Eng. Reinf. Unit

Note.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

Army Form. 064, K.R., 1935.

*The numbers inserted should correspond with the number of entries in the Conduct sheets, preference being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dates.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with:—

	*Within last 12 months.		*Since Enlistment.	
For WOAS-AWL- A.A.15(1)	3	times	8	times.
For WOAS While in confinement Escaping A.A.22	1	times	1	times.
For		times		times.
For		times		times.

Number of instances of gallantry or distinguished conduct 1945

or,

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted.

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

W1. 43645/864 50,000 2/45 W. & S. Ltd. 51—6904

3. The accused is not under sentence at the present time.

or,

The accused was under the present charge in close arrest [illegible]

beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges

for days in Civil Custody,

and 9 8 days in Military Custody.

Total 9 8 days.

Of which days were spent in hospital.

5. The present age of the accused according to [illegible] attestation paper is 26 yrs. 2 mos.

6. The date of his attestation specified in his [illegible] is 9 Nov 1939

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2-6/12 yrs.

8. The accused is entitled to deferred pay or gratuity in respect of 2-6/12 years' service.

9. The accused is entitled to reckon 2-6/12 years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [illegible]

11. [illegible]

12. [illegible]

, dated

, and in his regiment (or corps or department) the rank of

dated

13. [illegible]

In the rank of , Date of Promotion.

In the rank of years.

In the rank of years.

In the rank of years.

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked D, signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name D-16200 Sapper Owen Patrick Ryan of the No.1 Cdn. Engr. Reinf. Unit

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
F.C.C.M.	19 Oct 40	(1) WOAS- A.A. 22 - When in confinement escaping in that he on the night of 10 Oct 40 when in confinement in the detention barracks at Aldershot Heath escaped. (2) WOAS- A.A.9(1) - Disobeying in such a manner as to show a wilful defiance of authority, a lawful command given by his superior officer in the execuation of his office.	112 Days Detention	

(Continued overleaf.

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 22 day of May 1942

Lt Col Commanding.

RR-150 (case #3) (AFRICA)
SPR. RYAN O.P.
See 142 for 1st case
" I-50 " 2nd "

Correspondence to be PINNED here.

RR-150

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 30th day of August, 19 43.

Whereas it appears to me, the undersigned, an officer in Command of the Royal Canadian Engineers, 1 Cdn. Div., on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* I am unable to appoint

*[x] Three Officers to form the Court

*[ ] A Field Officer as President

for the following reasons, namely:—

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	L.G.C. Lilley	1 Cdn.Fd.Coy., R.C.E.

Members.

Rank.	Name.	Regiment.
Capt.	L.D.Publicover	3 Cdn.Fd.Coy., R.C.E.
Capt.	F.H.Nuttall	2 Cdn.Fd.Pk.Coy., RCE.

Waiting Member To be detailed by C.R.E. 1 Cdn.Div. from RCE 1 Cdn.Div.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed G. Walsh Lt. Col.

Commanding (G.Walsh) R.C.E., 1 Cdn. Div.

Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D-16200 Sapper Owen Patrick RYAN 4 Cdn.Fd.Coy., R.C.E.	First Charge A.A. 19	Guilty	Guilty	Confirmed. Walsh Lt Col.
	Second Charge A.A. 15 (1)	Not Guilty but guilty	Guilty	
	Third Charge A.A. 11	Not guilty	Guilty	
	Fourth Charge A.A. 40		Guilty	
	(See charge sheet)		6 months Detention 31 aug 43 RSC Kiley maj	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) Walsh Lt.Col. (Signed) RSC Kiley maj
(G.Walsh)
Commanding R.C.E. 1 Cdn.Div. *President.*
Convening Officer (c)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 31st day of Aug. 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The Interpreter)
*(4. ~~The officers under instruction~~)

*Omit if not applicable.

were duly sworn.

Signed this 31st day of Aug. 1943

RSC Kiley maj
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (i) on page 762 M.M.L., 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barracks until further orders.)

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 2 day of September 1943.

Walsh Lt Col
Confirming Officer.

Promulgated and extracts taken in the case of D16200 Spr Ryan O.P.

(a) (Dated) 4 Sep 43 (Signed) Judge Advocate.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(22573) W1 46179-850 50,000 2-43 A.& E.W.Ltd. Op.499

CHARGE SHEET

The accused D.16200 Sapper Owen Patrick Ryan of the 4th Canadian Field Coy, R.C.E. a soldier of the Cdn Army (Overseas) C.M.F. is charged with: -

While on active Service.

1st Charge AA 19 — Drunkeness in that he, In the Field, in the town of LENTINI on 19 Aug 43 was drunk.

2nd Charge AA 15(1) — Absenting himself without leave, in that he, In the Field on 19 Aug 43 absented himself from 1630 hrs 19 Aug 43 until apprehended by the R.C.M.P. in LENTINI at 2000 hrs 19 Aug 43 (Absent 3 hours 30 mins).

3rd Charge AA 11 — While on Active Service neglecting to obey unit Pt. I orders, in that he, In the Field, on the 19 Aug 43 was found in the town of LENTINI which said town was out of bounds, contrary to unit Pt. I orders No. 13 dated 18 Aug 43.

4th Charge AA 40 — Conduct to the prejudice of good order and military discipline in that he, in the field on 19 Aug 43 in the town of LENTINI was in improper possession of a 500 Lira ITALIAN note being the property of a civilian one ALFIO D. PUPILLO of via FIERI 30.

Field
28 Aug 43

R. Clarke Capt
a/O.C. 4 Fd Coy RCE

To be tried by Field General Court Martial

Field
Aug 43

Ryan
Lt. Col.
C.R.E. 1 Cdn Div.

MEDICLA OFFICER'S CERTIFICATE

I certify that No D-16200 Spr. Ryan O.P.

to undergo tria l by Court-Martial

No

Proceedings of a Field General Court Martial on D 16200 Spr. RYAN, Owen Patrick, 4 Cdn Fd Coy RCE.

Held at 1100 hrs 31 Aug 43 at HQ, 4 Cdn Fd Coy RCE.

1. Court properly constituted in accordance with R.P. 22 & 23, as modified by R.P. 106.
2. Court is opened.
3. Convening order read by President.
4. Accused asked if any objection to members of Court. - (No)
5. President swears members.
6. Members swears president.
7. Accused has no objection to interpreter.
8. Court is cleared, charges read to accused and ~~and recorded and~~ plea recorded, ~~witness for prosecution brought in~~.
9. Certificate of fitness to undergo trial submitted by Prosecution (Exhibit "A")
10. Court proceeds to take evidence on second charge:

1st Witness (Prosecution) Having been duly sworn states:

I am D 16144 Sgt. Mallette, I.J., platoon Sgt. of #2 Pl of 4 Fd Coy. On 19 Aug. 43, I held a platoon parade at 1630 hrs., and on calling the roll the accused was absent. I did not see him again until he was relieved by the RCMP that evening.

Q - Had the accused been notified that there was a parade.

A - A training syllabus, showing this parade, was posted in the platoon lines. This had been a regular parade for the last 2 or 3 days.

Q - was there any other absentees from your platoon at that parade?

A: No Sir.

Defense cross-examines:

Q - Was there not a possibility that the syllabus may have been removed by some one?

A - There was a possibility, but the orders had been posted for 2 days, and everyone else in the platoon was aware of it.

3rd Charge

1st Witness

D 16153 Cpl. Hicks, H., having been duly sworn states:

I am D 16153 Cpl. Hicks, H. of Odlum Fd Coy RCE. I am Orderly Room Cpl. for this Coy.

APP. "B" I hereby present a copy of Unit Pt I Orders d/10 Aug. 43, which states that all towns are out of bounds to all troops.

Q - Was this ordered posted on Coy. order board.

A - Yes, sir.

Defense - declined to cross-examine.

2nd Witness

Sgt. McArdle, R.C.M.P. having been duly sworn states:

Q - Do you recognize the accused?

A - Yes sir.

Q - Will you explain, on the 19th Aug., where you picked this man up?

A - At approx 1920 hrs. 19 Aug, an Italian entered the det. hq. in Fontini and reported that he had lost 500 lira and that some soldiers had taken same.

I proceeded through the town with the civilian, and at approx 2000 hrs, the civilian pointed out the accused as one of the men he had seen leaving his

house.

I took him to det. H.Q. and searched him, finding a 500 Lire note. As the accused had been drinking, I did not question him but returned him to his unit, keeping the 500 Lire note.

Q - Where, in Fontini did you pick up the accused?

A - In one of the side streets in Fontini proper.

Q - What was the condition of the accused.

A - He was drunk, hardly able to walk.

Defending Offr. cross-examines:

Q - Are you sure it was in Fontini proper, or on the outskirts

A - Quite definitely in Fontini.

4th Charge:

1st Witness: Pupillo Maria (unable to speak English was not sworn in, but warned through interpreter as to necessity for giving proper evidence).

Q - Do you recognize accused?

A - Yes.

Q - Under what circumstances did you meet him and when?

A - On 19th Aug. between 5.30 and 6 o'clock, he came to my house ~~in company~~ and asked to cook him some eggs.

Q - Was he alone?

A - No there were five of them.

Q - What did they do when they came in and how did they enter?

A - They just walked in and demanded that I cook some eggs, which they had with them.

Q - How did they act inside?

A - ~~They sat~~ They sat down and when I had cooked the eggs, ate them.

Q - Did you see the accused take any

(Cont.)

money?

A - Yes, a 500 Lira note from under a bottle. (Exhibit "C" - 500 Lira note)

Q - Did you see the accused put it in his pocket?

A - Yes.

Q - How did the accused know the money was there?

A - After finishing their meal, they were looking around for wine, and found the note under a bottle.

Q - Did you definitely see the accused put the money in his pocket.

A - Yes. Then my grandmother attempted to get the money back, and the accused pushed her away.

Q - Do you recognize this note as yours?

A - Yes, that is the one.

(NOTE: - No definite identification could be made)

Q - What time did the men leave?

A - About 6.30 o'clock.

Q - What did you do after the men left

A - I sent my child after my husband, and on his arrival told him the story. He then went to the police.

Cross-examination by the defense - ~~reiteration~~ & questioning along lines above.

2nd Witness Danno Alfio having been warned through interpreter, states:

Q On the night of 19 Aug., my young son came to me, and said that there were some soldiers at the house who wanted some eggs fried. I returned, and saw the soldiers just leaving.

I had left a 500 lira note ~~on~~ the house, and on returning, my wife told

(Cont.)

that the soldiers had taken it.

Q - Do you recognize this note as yours

A - Yes, I think that is mine.

Q - What did you do then?

A - went and reported the incident to the police.

3rd Witness

Sgt. McArdle recalled:

Q - Do you recognize this $500 Lira note as the one taken from the accused.

A - Yes. Here are my initials, the date, and the initials of a witness on it.

4th Witness:

Cpl. Burkman, E.T. R.C.M.P., having been duly sworn states:

On or about the 23rd Aug. '43, I C 41981 Cpl. Burkman came to the 4 Tel Coy to interview the accused. I warned him in the usual manner and he made this statement (~~Appt.~~ Exhibit "D")

No questions by defense.

The accused did not wish to give evidence or make a statement.

The Prosecution gave closing address (altered)
The Defense gave closing address (")

The Court closed for finding.

The Court re-opened - Capt EAN Pritchard presented AFB 296 and certified copy of MFM 6. Particulars certified as correct from documents in his custody (Exhibits E & F)

(CONT)

The defense does not wish to make plea in mitigation.

The Court closes for to consider sentence.

Geo Lacy
Maj.

Statement of Prosecution

On charge #1 inasmuch as the accused has pleaded guilty, the prosecution rests.

On Charge #2.

Found in the evidence given by Sgt. Mallette that a parade at 1630 hrs had been a normal procedure for three days & thereabouts prior to the accused being absent, it seems to me quite and absolutely unlikely that the accused was in ignorance of the parade even granted that the Training Syllabus which Sgt. Mallette had posted was removed from its place by persons unknown as the accused was the only one absent from this parade, ignorance of parade time when the remainder of the Pl was present seems far fetched and entirely unreasonable.

On Charge 3.

Part I orders dated 10 Aug 43 and submitted in evidence have shown conclusively that this specific order had been published and duly posted. Any excuse to the effect that orders were not seen due to posting probably been removed from

Charge #3 cont'd

then place by posting, seems to me to be an entire hallucination on the part of the accused, who, as afore-stated has already inferred not having seen a training pyplakan going parade town (Charge #2). Granted one atom of doubt exist on behalf of the accused, it seems to me too much to expect that the accused would not have seen or, in the course of any travelling failed to have noticed the glaring sign boards outside town and herein in question stating "Out of bounds to all troops not on duty!" The prosecution rests.

Charge (no 4)

Sworn evidence given by Maria Pappile of positive point blank accuses Spr Ryan (the accused) of being the man who picked up and pocketed a 50 Lira note (definitely identified as his by her husband in boarding)

Furthermore Spr Ryan was still in possession of this note when picked up and searched by the R.C.M.P Sgt. (Sgt McCardle). Note submitted in evidence to me and I know to all in view of

the evidence submitted, it seems a fallacy of the first order (though I must state it has not been inferred by defence) that someone else may had removed said note from residence of Maria Pappile and later planted or passed it on the the accused. Surely no one could but doubt the identity by a person ~~of~~ i.e. no explanation is forthcoming from accused or defence as to how accused came by the note, except possibly statement (written) by accused to effect that "I don't know how I came about having this note" or words similar to that effect. Any excuse that accused might possibly have been under the influence of liquor and may not have realized his actions at the time (note was taken) is discounted by the statement (verbally) in evidence by Maria Pappile that the soldiers at her house (of which the accused was one) were, at the time quite sober.

In view of the overwhelming evidence submitted ~~and the~~ the guilt of accused is beyond the shadow of a doubt.

The prosecution rests.

Summary of Defence to D16201 Sgt Lynn O.R.
4th Div RCC

1st Charge - Guilty.

2nd Charge - Order to the effect that there would be a parade at 1430 hours on 14 Aug. was not posted on part I orders, but on a syllabus which was on the notice board and dealt to removal by an NCO studying syllabus.

3rd Charge - At noon was under the influence of liquor. Was not in full control of his normal senses. Admit he was quite drunk was given in evidence by Sgt McArdle RCMP

4th Charge - The accused was not actually seen taking the said $20 but was not. The prosecutor also stated that Pte Ste Marie was not sure that he had seen the accused take the money. He could not indentify the money.

No one could make a direct statement that the accused was seen stealing the note.

K. K. Lynn

Exhibit "B"

PART I ORDERS
BY
Major J. Blair, R.C.E.
Commanding
4th Cdn Field Company R.C.E.

In the Field — For 10 Aug 43

LAST PART ONE ORDER NO. 10 9/9 Aug 43

PARADES.

REVEILLE	0600 hrs
BREAKFAST	0700 hrs
MORNING PARADE	0800 hrs
DINNER	1230 hrs
AFTERNOON PARADE	1730 hrs
SUPPER	1830 hrs

11. PARADE STATE.
H.Q. -1 - 2 - 3 pls will submit to the CSM before 0900 hrs daily a parade State.

12. OUTFITS' KIT.
Officers will submit complete lists of all kit, personal or otherwise, lost through enemy action. This report will state circumstances, dates etc. These will be consolidated for the Coy and forwarded to HQ 1 Cdn Div for action.

13. OUT OF BOUNDS.
All towns will be OUT OF BOUNDS to all troops.

14. TASK.
Task for 10 Aug 43 is NO.2.

(J.Blair)Major,R.C.E.
Officer Commanding,
4th Cdn Field Coy, R.C.E.
1 Cdn Div.

c

Received from Maj LCC
Lilley 500 lira note 000863
Drawn 4 Aug

3 Aug

500 lires
note returned
to Drawn also
31 Aug 43 Lyle A. Berg
Maj

D/

Sapper Ryan C.E.
was picked up on Lintern -
drunk by the R.C.M.P
on my person was found
by the R.C.M.P a 5 hundred
Lire note, How I come by
this note I don't know
as I was drunk at the
t Spaghetti was got
done. both us for the night
evening
Yours

SUMMARY OF EVIDENCE IN THE CASE OF

Sapper Owen Patrick RYAN
D.16200 4th Cdn Field Coy, R.C.E.

By direction of the Commanding Officer, this summary is taken under oath, 26th day of August 1943.

1st WITNESS:

Pupillo Marie, having been duly sworn states: At 1750 hours of 19 Aug. Spr. Ryan came to my home and demanded that I cook some eggs for him I cooked the eggs. I saw him take 500 Lira from under a bottle on the table.

Cross examined by accused:-

QUESTION: Do you remember seeing me in the house ?

ANSWER: Yes.

QUESTION: How many soldiers in the house at the time.

ANSWER: Five soldiers

QUESTION: Do you know who took the money ?

ANSWER: I'm not sure.

(Signed) Pupillo Marie

2nd WITNESS:

I Damma Alfio Pupillo having been duly sworn states:-
I was uptown at the time my wife sent for me, saying that, there were some drunken soldiers at home who wanted some eggs fried. I had put 500 Lira under the bottle an hour before, and as I came home heard my wife saying that the soldiers had stolen 500 Lira from the table.

The accused declined to put question to the witness.

(Signed)Damma Alfio

3rd WITNESS:

I Sgt. McArdle having been duly sworn state: That at approx 1900 hours 19 Aug 43. An Italian entered police detachment at LENTINI and reported that he had post 500 Lira and that 3 soldiers had taken same.

I proceeded through town of LENTINI at 2000 hrs and picked up Spr. Ryan and on his person was found a 500 Lira note.

EXIBIT "A" now produced, the man I cautioned and as he had been drinking I did not question him. I returned him to his unit. Retaining the 500 Lira note.

Accused declines to question witness.

(Signed) Sgt. McArdle.

4th WITNESS:

On or about 23rd Aug 43. I, C.41981 Cpl. Burkmar, E.T. came here to enterview Spr. Ryan and I obtained the following statement from Spr. Ryan before witnesses. C.S.M. Chartres and Capt. Prichard which reads as follows.

I Spr. Ryan O.P., was picked up in LENTINI drunk by R.C.M.P. on my person was found a 500 Lira note, how I came by this note, I do not know as I was drunk at the time.

(Signed) Spr. Ryan

EXHINIT "B" now presented.

Accused declines to question witness.

(Signed) Murkmar, E.T., Cpl.

Accused declines to make a statement.

5th WITNESS:

D.16144 Sgt. Mallette, I.J., having been duly sworn states:

I am D.16144 Sgt. Mallette, I.J., platoon Sgt of No. 2 platoon of the 4th Cdn Field Coy, R.C.E. On the 19th Aug 43. I held a platoon parade at 1630 hrs on calling the roll, the accused, whom I recognize, was absent. I did not see the accused again until he was returned by the R.C.M.P. in the evening.

(Signed) I.J. Mallette, Sgt.

The accused declines to cross examine the witness.

6th WITNESS:

D.16153 Cpl. Hicks, H., having been duly sworn states:
I am D.16153 Cpl. Hicks, Orderly Room Corporal of the 4th Cdn Field Coy, R.C.E. I hereby produce as EXHIBIT "C" Unit Pt I orders dated 10 Aug 43, Para 13 stating that all towns will be out of bounds to all troops.

(Signed) Hicks, H., Cpl.

The accused declines to cross examine the witness.

The fifth witness, D.16144 Sgt. Mallette, is recalled and having been duly sworn states:
I am D.16144 Sgt. Mallette of No. 2 platoon of the 4th Cdn Field Coy, R.C.E. Pt. I orders for Aug 10th, EXHIBIT "C" were posted on our platoon notice board on the 9th Aug 43 which is the normal practice.

(Signed) I.J., Mallette,Sgt.

QUESTION: Can you remember definitely if this Pt. I order, EXHIBIT "C" was posted on the notice board and remained there long enough to be read.

ANSWER: I know the order was posted but just how long it stayed there I do not know.

The accused having been duly cautioned in accordance with R.P.(e) reserves his defence.
Certified R.P. 4 (c)(d)(e) and (f) have been complied with.

Taken before me in the presence and hearing of the accused this 27th day of Aug 43. In the field.

(Signed) S.J.Simons, Capt.R.C.E.

"E"

ARMY FORM B.200.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
D16200	Spr	OWEN PATRICK RYAN -	4 Field Co R.E.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement, but not appended to the proceedings.

† See para. 622, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, the utmost leniency being given to the most serious offence in each entry, and to any mentioned special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	* Since Enlistment.
For A.W.L.	~~three~~ TWICE times	Nine times.
For A.A. 22 - escaping from detention bks	times	Once times.
For A.A. 9 (1) - disobeying a lawful command	times	Once times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct.

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for N/A beginning on the ..... day of .....

4. The accused has been in confinement, awaiting trial on the present charges, for N/A days in civil custody, and Twelve days in military custody, making a total of Twelve days, of which ~~12 days~~ Nil days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is .....

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 3.9.39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is .....

8. The accused is entitled to deferred pay or gratuity in respect of ..... service.

9. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of .....

12. (*In the case of an officer.*) The accused holds in the army the rank of ..... dated .....

and in his regiment (or corps or department) the rank of ..... dated .....

(*)15648) Wt.20248/502 75,000 12/40 A.& E.W.,Ltd. Gp.679

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. D/6200 Rank Sjt Name Orden Patrick Ryan of 4 Field Coy RCE Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
FGCM	10 Oct. 40	AA 22/28 - When in confinement escaping from detention bks.	112 days detention	21 days
		AA 9 (c) Disobeying a lawful command.		
FGCM	30 Nov. 42	AA 15(2) A.W.L.	3 Mths detention	29

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 27 day of May 43

[signature] officer i/c Regtl. Record

13 The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of ..... years, ...

In the rank of ..... years ....

In the rank of ..... years ....

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through except that in the case of a trial by field general court-martial the information may be obtained from such sources as are available and the paragraphs concerned amended accordingly.)

No. D.16200 Name RYAN, O.P., Sqn., Battery, or Company — Corps R.C.E. — Date of enlistment 3.9.39 — G.C. Badges — Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet N/A — No. and date of last drunk N/A — Period not reckoning towards freedom from extra line N/A — Sheet No. 1 — Signature O.C. Company, etc. — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
XXXXX Aldershot	19 Jun 40	Spr.		WOAS - AWOL from 2200 hrs 19 Jun 40 to 2200 hrs 8 Jul 40 (Abs. 20 days) A.A.15(1)	Cpl.McGuire, Sgt.Stevenson, L/Sgt.Bennett.	Forfeits 40 days pay 20 days:- A.A.46(2)(d) Auth: P.R.&I.149(1)(e) 20 days:- PR&I.149(1)(a)	11 Jul 40	E.C. Thorne, Capt. RCE 4th Cdn Fd Coy	
XXXXX Brigade camp	21 Aug 40	Spr.		WOAS - AWL in that he failed to appear at the place of parade appointed by his C.O., Namely:- Marching Out Parade. AA 15(2)	L/Sgt.Bennett, Sgt.Stevenson	168hrs DETENTION	21 Aug 40	H.F.Seymour, Major, RCE OC 4th Cdn Fd Coy.	
Tregantle	13.2.41	Spr.		AA.15(1) AWL from 2359 hrs 13 Feb 41 to 0900 hrs 18 Feb 41 (Abs. 105hrs 1 min)	Documentry	Returned to Unit	17 Feb41	J.L. Lieut.-Col	Forfeits 3 dys pay PR&I.149

P.T.O.

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bde.Camp	13 Sep 40	Spr.		WOAS - AWL from 2200 hrs 13 Sep. 40 to 1400 hrs 19 Sep.40.(Abs. 5 days 16 hrs)A.A.15(1)	L/C.Hamilton L/S.Bennett	14 days detention	19 Sep. 40	R.J.Cassidy Capt. OC.4th Cdn Fd Coy	
Field	10. Oct. 40	Spr.		1. WOAS A.A.22 When in confinement escaping in that he on the night of 10 Oct 40 when in confinement (in the detention bks)at Aldershead Heath escaped. 2. WOAS A.A.9(1) Disobeying in such a manner as to show a wilful defience of authority a lawful command given personnally by his superior officer in the execution of his office.	L/C.Thompson,H., Spr.Casselman,H.	112 dys DETENTION Released from the Detention bks. Aldershot on 1 Jun 41	19 Oct 40.	F.G.C.M.	

No. D.16200 Name RYAN.O.P. Sqn., Battery, or Company Corps R.C.E. Date of enlistment G.C. Badges Service or Proficiency Pay M.F.M. 6 A.F.B. 122

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
BORDON	17Mar.41	Spr.		A.A. Sec.15(1) AWL 17 Mar 41 to 17 Mar 41 (Abs.13 hrs 55 mins)	Documentary	27 dys Det. Released from Detention bks Witley on 10 a pr 41	18.Mar.41	LT.-Col. L.F. Barnes.	Forfeits 1 dys pay 149(1)(a)
Field	17 Sep 41	A/L/Cpl.		A.A.15(1) AWL from 2359 hrs 17 Sep. to 18 Sep 41 (0800 hrs) (Abs.8 hrs 1 min)	C.S.M. Murdock	~~REVERTS~~ Reverts to Sapper	19 Sep.41	R.J. Cassidy, Major.,	Forfeits 1 dys pay FRAI.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	20 Sep 41	Spr.		AA 15(1) AWL from 2359 hrs 20 Sep 41 to 0800 hrs 15 Oct 41 (Abs. 24 days 8 hours)	Sgt.Liberty	14 dys C.B. Deprived of 26 dys pay FR&I.149(1)(e)	16 Oct.41	R.J. Cassidy Major.,	Forfeits 25 days pay FR&I.
				SOS to No.1 E.H.U. 14 Nov 41 MPU 6 verified to date. (Signed) J.S.Osborne)Lieut. 4th Field Coy,					
Guillemont Bks.,Cove Hants	30 Nov 42	Spr.		AA.15 (1) AWL from 2359 hrs 30 Nov 41 until 0905 hrs 14 Feb 42		3 months DET.	22.May42	F.C.C.M.	Confirmed by A.E. NASH 26 May 42

COPY

No. D.16200 Name RYAN, C.P., | Sqn., Battery, or Company | Corps R.C.E. | Date of enlistment 3.9.39 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 3 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	14.8.43	Sgt.		WOAB - Absent without leave from 0800 hrs 14 Aug 43 to 0830 hrs 14 Aug 43. (Abs. 1/2 hrs) AA.5(1)	Sgt. Mallette	Deprived 7 days pay PAI 149(2)	16.8.43	J.Blair, Major.R.C.E.	

Certified true copy from the Regtl books in my possession

P.T.O.

COUNTER NUMBER 5-62021

HOUR 10:30

OPERATOR'S INITIALS CDH

RELIEVING OPERATOR _____

END

FIRST

SIDE

44.89

44.89

START

SECOND

SIDE

80-102.

Pte. Ryan, P. J.

FIELD GENERAL COURT-MARTIAL

4/388

Convening Order dated [illegible] Comd [illegible] dated 16/1/45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
G.32873	Pte	Peter Joseph	RYAN	3 Can Inf Bde Wksp R.C.E.M.E.

PROCEEDINGS REVIEWED

WTHall Capt

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) Italy on (*date(s)*) 2 Nov 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member~~, JA, ~~if any~~, ~~and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MAM, pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A99, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 10[illegible] hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The ~~Prosecutor~~ informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: Do you object to [illegible] as interpreter? Ans No

The Interpreter is sworn.(1) Do you object to [illegible] as shorthand writer? Ans No

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(8). If objection, see procedure AA 51, RP 25, 71, 18, MAM, p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	[illegible]	[illegible]
Member	CAPT	PIERRE ANDRE JOURDAIN	2 CIB ~~Wksp~~ RCEME
Member	CAPT	FRANK ADAMSON	1 CIB ~~Wksp~~ RCEME
Judge-Advocate	Capt	[illegible] DEITZ	[illegible]
Prosecutor	Capt	[illegible]	3 CIB ~~Wksp~~ CEME
Defending Offr	Capt	LED [illegible]	2 CIB RCEME

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (3)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.
2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See 2nd p 3.)

A8. The accused ~~stands mute and~~ before arraignment make(s) ~~(has)~~ no plea (1)

(1. If a special plea is made for separate trial of one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36(1)), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rons and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62, when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. H-117

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to make your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans N/A (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans YES. Do you intend to call witnesses on your behalf? Ans No. Are they witnesses as to character only? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(6).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
(*Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.*)(2)
(*1. AA 54(2) (6), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans YES.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex X and Ex Y respectively.(3)
(*1. MFB 355 or MFB 296. 2. MML p. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans YES.
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182. RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: Y.32873 PTE. Ryan, Peter Joseph

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Sec 41 (1) AA, Voluntarily		Not guilty as charged but guilty of Reckless Driving Contrary to Sec 11 (1) Road Traffic Act 1930 pursuant to Sec 36 (6)	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 36, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~To undergo~~ present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 1 2 days, of which D days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
To undergo detention for Six (6) months.

(Sgd) J. C. Steele Capt. — Judge-Advocate, if any. 13 JUNE 45 — Date awarded. (Sgd) [illegible] — President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 55, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) DAA
(1. AA 57A. Delete if not used.)

(Sgd) A. H. Williams Lt Col.

Date 21 June/45. Commanding M.D. 2 CRWT (Con Div) Confirming Officer. (AA).

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
6 32873 PTE RYAN P.J.	22 JUNE 1945	C. G. Rankin Maj
3 Con Inf Bde Wksp RCEME		

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CHARGE SHEET

The accused, No. G.32873 Pte. Peter Joseph RYAN, 3 Cdn Inf Bde Wksp R.C.E.M.E., a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Sec 41
Army Act

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, MANSLAUGHTER

in that he

In the Field, in Holland, on 8 June 45, unlawfully killed A.31127 Gnr JOHNSTON, A.J., 3 Fld Regt, R.C.A., C.A.O.

Second Charge
Sec 40
Army Act
(Alternative)

WHEN ON ACTIVE SERVICE, NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field, in Holland, on 8 June 45, so negligently drove a WD motor vehicle as to cause it to become involved in an accident, thereby injuring A.31127 Gnr JOHNSTON, A.J., 3 Fld Regt., R.C.A., C.A.O.

(C.J. RANKIN) Major
Officer Commanding,
3 Cdn Inf Bde Wksp, R.C.E.M.E.

In the Field
14 June 45.

To be tried by F.G.C.M.

15 June/45

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA33)
40(FAS/1607) (29452)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Can Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G 32873	Private		Peter Joseph	RYAN	3 Can Inf Bde Hksp RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 15 June 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed ~~or detailed hereunder.~~

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have~~ attached hereto.
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	Finley Heston McEWEN	1 C I B Hksp RCASC

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	Frank ADAMSON	1 C I B Hksp RCASC
Captain	Pierre André JOURDAIN	2 C I B Hksp RCOC

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Captain	L. MARTIN	Hq RCASC

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Captain	T. G. ODETTE	Hq 1 Can Inf Div

On Active Service in the Fd

in HOLLAND
(*Country.*)

Date 16 June 45

(Signed personally. RP 105 fn 2.) (Rank.)

Commanding Hel R C Ellis / Colonel
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

To: Medical Officer,
DMA HQ, 1 Can Inf Div.

MEDICAL OFFICER'S CERTIFICATE

I certify that No. G.32873 Pte. RYAN, P.J. - 3 Can Inf Bde Wksp, RCEME, is fit to undergo trial by Court-Martial.

Date 18 Jun 45

Signature of the Medical Officer

Insert "Fit" or "unfit".

The prosecuting Officer stated that he did not intend to call 2 witnesses who appeared in the summary on charge were not now available - A/Sgt Cooke J.E, and Bdr Shields, R.C.
The Def. Officer stated that he had no objection and did not require the witness.

Petrina Adriana Pruim -- P/A Koninginnestraat 1 Rood Dordrecht.

FIRST WITNESS was called by the Prosecuting Officer and having been duly sworn, being unable to speak English, testified through an interpreter as follows:

Q Do you recognize the accused?
A Yes
Q Under what circumstances did you last see this soldier?
A At the time of the accident.
Q What accident was this?
A The accident on the Friday when another soldier was killed.
Q What Friday was this, or what date?
A One week ago last Friday.
Q Did you see the accident?
A Yes.
Q Give a statement of the accident and what you saw.
A I was coming from the direction of Rotterdam and from the direction of Dordrecht came a truck. From the direction of Rotterdam came a soldier on a bicycle. The soldier on the bicycle was riding on the right-hand side of the road. The truck was riding on the middle of the road, more to the left-hand side of the road. When they approached the truck swerved and hit the soldier on the bicycle. The man with the bicycle was thrown in the air and landed on the side of the road. The truck stopped. It was going very fast and therefore could not stop very quickly. The driver of the truck stepped from the truck and I waved my hand to indicate that the soldier was lying on the road. There was one English soldier appeared on the scene and talked to the driver. The English soldier stopped a car of the N.B.S. and went with them to get a Doctor. One Canadian soldier left for the scene of the accident of the accident in a truck and saw he could be of no help and left. He returned to get a Doctor. Later on he returned with two other Military persons and a Doctor and as they appeared on the scene the soldier just died.
Q Was the truck going fast or slow?
A Very Fast.
Q Could you estimate the speed in miles per hour?
A I have no idea of the speed in Miles per hour or Kilometres.
Q Did you see any erratic driving prior to the collission?
A Before the accident happened I noticed that the truck was driving very fast.
Q Was the road wide enough for the truck to pass the bicycle without hitting it?
A Yes, certainly.

FOR the information of the court the witness prepared a rough sketch of the road showing location and speed positions of cars & bicycles. Defence Counsel & Ld no objection marked E. "A"

The Defending Officer then cross-examined the witness as follows:

Q How far were you from the bicycle when you first noticed it?
A As a rough guess, approximately 65 metres.
Q What made you notice the soldier on the bicycle?
A Nothing happened for me to take special notice of the bicycle. Only that I just noticed it.
Q When you first noticed the bicycle was it going fast?
A As I noticed the bicycle he was putting on the brakes, therefore I did not notice if he was going fast.
Q Why would he be putting on his brakes?
A He seemed to be putting on the brakes because the truck was swerving and made a great deal of noise.
Q What first made you notice the truck?
A At first I saw the truck and it was going fast and then it swerved and made so much noise.
Q You did not notice anything until the truck had swerved?
A No.
Q How long was it from when the truck first swerved until it hit the bicycle?
A I cannot estimate the time but it seemed to be a minute.
Q The moment the truck swerved, did it hit the bicycle?
A (Witness could not understand)
Q How far was truck from the bicycle when it swerved?
A (Again the witness could not comprehend)
Q Did you only notice the vehicles when the collission happened?
A I only noticed the vehicles when the collision happened.
Q You took particular notice only when the accident happened and therefore you do not know the positions of the vehicles prior to the accident?
A I only noticed when the collision happened.
Q Was there any other traffic on the road?
A Only those two.
Q As a matter of fact, is this highway a two-lane highway with bicycle roads separate?

A Yes.

Q As a matter of fact the bicycle was using the wrong lane?

A Yes; the bicycle should have been on the bicycle path.

Q Why was it not on the proper lane?

A Because it was under water and barred.

Q Were the bicycle paths covered with water?

A Yes

Q Both paths on both sides of the road?

A The bicycle path on the right-hand side was under water but on the left-hand side, was not.

Q Have you ever been in a truck like that in the accident?

A Yes.

Q Did you ever go fast in the same sort of truck?

A Yes.

Q Did you know how fast you were actually going in this truck?

A I have no idea of the miles per hour but I have driven from Dordrecht to Rotterdam in twenty minutes.

Q How far is it?

A 88 kilometres.

Q After the accident, in time, how long did it take for the truck to stop?

A I think about two minutes.

Q How far in metres?

A I think at least seventy-five metres.

Q When the truck stopped, what happened?

A When the truckstopped, it was standing nearly on the grass on the opposite side of the road from the accident.

Q What did the driver do?

A The driver stepped out of the truck and walked to the back of the truck and returned to the front and got in again.

Q What did the driver do when he walked to the back of the truck?

A The driver looked in my direction and then went back to the front of the truck.

Q When the driver finally came back to the body of the man he had hit how did he appear?

A The driver seemed to be very nervous and sat down and felt the pulse of the other soldier.

Q Outside of that did you notice anything unusual about the accused?

A The Driver seemed to be very drunk.

Q Why did you think the driver was drunk?

A It seemed to be that the Driver was almost unable to stand and almost unable to talk.

Q Did you notice anything else?

A No

Q How close were you to the Driver?

A Approximately two or three yards.

Q Did the Driver appear to know what he was doing?

A The Driver knew what he had done.

Q When the accused came back did he know what he was doing?

A I do not want to say. I think he was drunk and did not know.

Q Tell the Court what he actually did when he came back.

A This soldier approached the other, shook his chin, called "Boy, Boy", felt his pulse and sat smoking a cigarette with the other soldier's pulse in his hand.

Q Did the accused say anything to you?

A When the accused arrived, he said "Go away!".

The Prosecuting Officer then questioned the witness:

Q When you spoke of the positions of the bicycle and the truck before the accident you stated that the bicycle was on the right-hand side of the road and the truck in mid-centre. How close was the bicycle to the side of the road was the bicycle when the truck hit it?

A I cannot say as it looked to me that the bicycle was headed to the side of the road trying to avoid the accident. The bicycle was close to the grass.

The A.D.J.A. then questioned the witness:

Q Do you recognize the driver involved in the accident?

A Yes. (and indicated the accused)

Q Approximately what hour of the day did the accident occur?

A 7.15 A.M.

Q What was the condition of the road?

A It was a paved road.

Q What were the the weather conditions?

A Dry weather.

Q Did you see the truck before it had swerved?
A Yes.
Q Have you any idea how far the truck was from the bicycle when it swerved?
A I think approximately seventy metres.
Q When the truck hit the bicycle were they on the right-hand side of the road or the left-hand side?
A On the right side.
Q Was the road being used by other bicycles that morning?
A No.
Q Had you ever seen the accused or the deceased previous to the accident?
A No.

In the opinion of the Court and J.A. it is not necessary to comply with R.P.-83b.

SECOND WITNESS, Capt. A.W. Park, Medical Officer with 3rd Fld. Regt., R.C.A., presently 5th Fld. Ambulance, was called by the Prosecuting Officer and having been duly sworn, testified as follows:

Q Would you give a short statement regarding the death and prior events leading up to the death of Gnr. Johnston, A.J.?
A I know nothing of the prior events. I was called after the man was dead. I think I was called two weeks ago last Friday. I was called from my bed by my own Orderly, who told me there had been a bad accident on the Autobahn. I got dressed, came down to the R.A.F., got the necessary equipment and my orderlies, and we proceeded immediately to the accident approximately ten minutes after we were called. We arrived there and found the body of Gnr. Johnston and as we drove up it was quite obvious he was dead. We jumped out of the truck and confirmed he was dead and then removed the body. In a cursory examination at that time we found that he had a fractured left thigh and left fore arm. That was all we could find on our first examination. After the body was placed in our vehicle, I questioned a man, whom I recognize as the accused and identified him by his pay book, about the accident. He could tell me nothing of what had happened. He pointed to a scrape on the body of the truck and said, "He must have hit here.", but he could not tell me how it happened at all. He was quite unsteady on his feet and there was a lot of dry spittle in the corners of his mouth. We then looked at the truck and saw that the left fron fender of the truck had been crumpled. There were a lot of civilians standing around and I asked if any had seen the accident. One girl, whose name I took said she had, and she was placed in our truck and taken along with us to our own Headquarters for questioning. The Driver of the truck was taken back to his Unit and the truck was driven by my own Driver,(Gnr.Brooks). When we arrived here I went into the Orderly Room and told the Officer of the accident.
Q You say the body was lying on the bank of the left side of the road?
A The Autobahn there is double and he was propped up on the bank in a sitting position perhaps two feet off the road. We picked up the bicycle also, with a badly bent front wheel and we took it with us.
Q Did the Driver of the vehicle seem to realize that he had killed a man?
A I did not ask him.
Q What condition would you say he was in?
A From his appearance I would say he was drunk.
Q Had he been drinking?
A I did not ask him.
Q Did you smell Alcohol?
A No.
Q Why did you place another driver in the truck?
A Because in my opinion he was intoxicated.
Q On what side of the deceased's body were the injuries?
A All the injuries were on the left side.
Q You said you examined the truck and that you found the left front fender crumpled. Did you find any other marks?
A There was a scrape on the side near the back which appeared fresh. That is the mark the accused showed me.
Q Was there flesh or blood?
A There was almost no bleeding.
Q Were there any marks which would indicate where the accident had taken place?
A No.
Q What disposal did you make of the body?
A We took it to 3rd Fld. Ambulance, thence to 3rd Field Regiment to discuss with the Padre and Officer Commanding its disposal and subsequently to 4 C.C.S. at Amsterdam.

Q What was your reason for doing this?
A In view of the nature of the man's death and the absence of what we would consider fatal injuries it was decided a Post Mortem should be held.

The Defending Officer then cross-examined the witness:
Q How long after the accident occurred did you appear on the scene?
A Roughly half an hour.
Q When you appeared, was the accused with the deceased.
A No, beside his truck.
Q Could the unsteadiness and general appearance be a natural consequence of the accident?
A The fact that he did not know what happened would tend to rule that out but it could possibly be so.
Q Could his garbled speech be a natural impediment?
A That is possible.
Q The accused appeared intoxicated. I think you stated that you did smell no Alcoholic Stimulant on the Accused's breath. Am I wrong in suggesting that you might smell it if he had been drinking?
A Not necessarily in the open.
Q I am suggesting that what you saw was the consequences of the accident but was he "bleary-eyed"?
A I deny the existence of a condition of a "bleary-eye".
Q In your opinion could a man drink and still be quite capable of driving?
A Yes, that is also quite correct.
Q Is there any determining factor?
A There is one's capacity to hold liquor and this varies with each individual.
Q Therefore, if the accused had been drinking, he could have been still capable of driving anddriving good?
A Yes.

The A.D.J.A. then questioned the witness:
Q Where was the body in relation to the road if you where going in the direction of Dordrecht?
A On the right-hand side.
Q Has Medical Science ascertained what affect Alcohol has on the re-action of the normal individual?
A The effect of Alcohol is to depress brain function and with regard to re-actions it is definitely known that it slows re-actions.

THIRD WITNESS:
Major L. G. Johnson, Medical Officer with 4 C.C.S., was called by the Prosecuting Officer and having been duly sworn, testified as follows:
Q Have you had anything to do with Gnr. Johnston, A.J.?
A I performed the autopsy on the body.
Q Could you briefly tell the Court the result of the autopsy?
A The result of the autopsy was that he had received a fracture of the left thigh and that he had a fracture of both bones of his left fore arm. He had a small haemorrhage of the brain and a rather small bruise of his left lung. The injuries in my opinion were the cause of his death and I was unable to find any evidence of any other organic disease.
Q Was there any evidence of Alcohol or evidence of drinking that the deceased might be able to function properly?
A The stomach contained about 200 c.c. of digested material and there was no odour of alcohol.

Capt. Park recalled at the request of the prosecution & questioned through the D.A.
The A.D.J.A. then questioned the witness: Capt. Park (second witness).
Q Do you recall the number of the truck?
A GL-427336 (This from a notebook in his pocket.)
Q Do you recall Gnr. Johnson's number and Name?
A His initials were A.J. I believe but am not sure of his number.

The Prosecuting Officer then called the FOURTH WITNESS, Gfn. Dumont, A. (L-154214) of 3 C.I.B. Wksp., R.C.E.M.E., who, having been duly sworn, testified as follows:

Q Do you recognize the accused?
A Yes.
Q On the 8th of June what did you see with regard to the accused?
A I saw him sitting in his truck.
Q On what occasion, was he parked?
A He drove up to the gate.
Q Were you on guard?
A Yes.
Q What did he ask you to do?
A To open the gate.
Q At what time?
A 6.10 a.m.
Q Did you notice anything peculiar in his attitude or manner?
A No, he seemed quite normal.
Q You had no reason to doubt that he was going on a Duty call?
A No.

The Defending Officer then cross-examined the witness:

Q How far were you from him when you saw him go through the gate?
A Ten or fifteen feet.
Q Did you speak to him?
A No.
Q He did look quite normal?
A Yes.
Q Was there any indication that he might have been drinking?
A No.

The A.D.J.A. then questioned the witness:

Q Did he say where he was going?
A No.
Q In which direction did he turn?
A I don't know.
Q Why not when you were on Guard?
A I did not notice as I turned to close the gate.

The Prosecuting Officer then called the FIFTH WITNESS, A/S/Sgt. Smith, J.E.W., (R-82068) i/c R. & I. at 3 C.I.B. Wksp., R.C.E.M.E., and having been duly sworn, testified as follows:

Q You were asked by A/S/S Taylor to check a vehicle which had come in after an accident. Would you give the Court the results of your inspection?
A I checked the vehicle. I know it was our own vehicle but I don't know the number. I first made an undercarriage check and found everything alright except for a slight bend in the right front fender and nothing else, so I Road Tested the vehicle, and found the steering heavy.
Q Would you say the steering of the vehicle would affect it seriously?
A The vehicle was in a serviceable condition and road-worthy.

The Defending Officer then cross-examined the witness:

Q By heavy steering would it cause the vehicle to be difficult to handle?
A By heavy steering it would take more effort to steer the vehicle.
Q Would it cause the vehicle to veer?
A It would not. It would have a tendency to cause the vehicle to run along a straight line.
Q Then if hands were removed just for a second it would cause the vehicle to veer if the wheels were turned that way?
A It would, for the type of steering geometry that is used on the vehicles now have a tendency to centralize themselves. If the wheels were turned to a slight angle the heavy steering would cause the vehicle to turn at that angle.
Q What damage did you find of the left front fender?
A I found that the last six inches of the fender was bent down slightly.
Q Would it take a solid jar to do that?
A I would say that a slight jar would do that.
Q If it were a heavy impact it would be more badly bent?
A I would say not badly bent, but more of a curve.

The Prosecuting Officer then Questioned the witness:

Q If a vehicle has loose adjustment it has a tendency to wander on the road?
A Yes.

Q If the steering gear-box is tight, that will have a tendency to drag the steering?
A Yeh.
Q When you took that vehicle on Road-test you said it was road-worthy?
A Yes.

The A.D.J.A. then questioned the witness:
Q What type of vehicle did you examine?
A Ford, 60-cwt.

The Prosecuting Officer then called the SIXTH WITNESS, Cnr. Brooks, M., (D-132857) of 3rd Cdn. Fld. Regt., R.C.A., who having been duly sworn, testified as follows:
Q What is your particular job?
A Driving a Medical Officer.
Q Did you accompany him a week or so ago to an accident?
A No.
Q Did you go with Capt. Park?
A I met him at the accident, but did not go with him.
Q What happened after the accident? Did you have a specific job?
A He told me to follow him back to the Workshop in the 60-cwt.
Q What 60-cwt. was it?
A R.C.A.M.C. vehicle.
Q It was the 60-cwt. involved in the accident?
A Yes.
Q Do you recognize anyone here as being at the scene of the accident?
A The accused.
Q What was he doing at the scene of the accident?
A He was just standing there by his truck.
Q Was it his truck you drove?
A I drove his truck back to the Workshop.
Q What was your impression of Ryan's condition?
A I thought he had been drinking.
Q Were you close to Ryan to get a good look at him?
A I think within two yards of him.
Q In the truck did you smell liquor from him?
A No.

The Defending Officer then cross-examined the witness:
Q Were there screens on the truck?
A On my side I noticed none but did not notice the other side.
Q What made you think the accused had been drinking?
A Just by his eyes.
Q Tell the court about his eyes.
A The way they moved. When a fellow is drunk his eyes wink slow like, not sharp winks like normally.
Q Did he appear to know what he was doing?
A I did not talk to him but a couple of words.
Q Did he answer logically?
A Yes.
Q Did he appear upset?
A No.
Q When he walked, did he walked steady?
A Yes.

The A.D.J.A. then questioned the witness:
Q He rode in the vehicle with you?
A Yes.
Q Your reason for thinking he had been drinking was for his eyes?
A Yes.
Q No other reason?
A No.
Q When you drove the truck did you notice anything wrong with the vehicle?
A It was hard to steer.
Q What was wrong with the steering?
A The steering was too tight. A steering wheel should have two inches play and it did nothave this.
Q If you turned a corner would the wheel swing back?
A No.

Address of Defending Officer

Motion is made for Non-Suit pursuant to Articles 40 and 70 in that the Prosecution have not a prima facie case and the defence is not to be called upon to produce any evidence.

Manslaughter is a very serious charge, practically next to murder. There is a very definite onus on the prosecution to proof xx that the accused is guilty without any reasonable doubt. But the only evidence produced by the Prosecution to prove manslaughter was, first a young girl, who was very fair in her evidence. However, on cross-examination, she admitted that she saw the accident only upon impact and actually did not definitely know what had happened. But that is the only evidence produced. In addition, Capt. Park, states that he was under the impression that the accused had been drinking. That may be so. The accused may have been drinking. However, Capt. Park admitted that a man can be a competent driver and drive well, although he had been drinking. The other witness, Dumont, the Guard at the gate, states that he appeared quite normal. Gnr. Brooks has testified that he walked quite steady and spoke logically. On the way home in the cab he smelled no Alcohol from the accused. We know from our own experience that if a man had been drinking heavily the odour would certainly have been noticed in a warm cab. I would read to the Court the definition of Manslaughter. (He read the definition.) Has the Prosecution done this. I submit that it has not. I now refer to the definition of "Onus of Proof". (He read again.) I submit again that the accused has not been proven guilty. Just one reminder, that the accused is not charged with drunkeness and that Manslaughter is an extremely serious charge.

Address of Prosecuting Officer

So far as the case against Gnr. Ryan, the Prosecution has tried to show that there was a negligence and disregard to life in that his driving was reckless, probably brought on by the xxxxxx fact that he had been drinking or was drunk. We have the statement of the Medical Officer to say so, who was at the scene of the accident. A man who is trained to state and see what is the matter with a person and he made the statement that Ryan was frothing slightly at the mouth, that his speech was incoherent and he had the impression that Ryan had been drinking or was drunk. That man, mind you, was a competent Medical Officer. The girl stated that the bicycle of the man killed was on the proper side of the road, that it was near the grass at the edge of the road and that just immediately prior to the collision, he was endeavouring to avoid the collision. He seemed to realize that he was about to be hit and was making an attempt to get out of the way. The same witness also stated that there was plenty of room on the road for the vehicle to pass. Her original statement stated that she saw the vehicle veer towards the bicyclist in which case it looks as if the vehicle ran the bicycle down, instead of the bicycle running the vehicle down. From the evidence given by the Medical Officer who did the autopsy, he was not hit hard but in a vulnerable place. I maintain that he was riding along the road and the fender had caught him under the arm. He was not thrown far but was pushed aside. The vehicle was not badly damaged but had hit him in a exceptionally vulnerable place to cause the fatal injuries.

Another witness states that it was his impression that the man had been drinking although he did not smell the liquor. Surely on a road which was wide enough for two vehicles to pass, a bicycle riding by one side of the road is run down by a truck which shown to be off its own side of the road and it's driver is claimed by two witnesses to have been drinking is culpable of some negligence and I leave it up to the court to decide. It was brought out in evidence that this man was driving a bicycle on a highway when at the same time there was provided a bicycle path. Be that as it may, it seemingly happens every day that these little rules are broken and the man had a right there and leaves no loop-hole for the negligence shown.

J. A on Submission

The court should disallow the submission if there is evidence, which if uncontradicted, would justify a finding of guilty, that is more than a scintilla of evidence which supports the charge, and which the court at this stage ~~is~~ are not prepared to disbelieve. The Court is acting as a judge and not a jury and need not consider & decide the credibility of witnesses & whether the prosecution has established its case beyond a reasonable doubt. If you think that on the evidence given - and you were to hear no more - you would find the accused not guilty, you should allow the submission.

The accused took the stand and having been duly sworn, testified as follows:

Q Do you recall the morning of 8th June?
A Yes.
Q Would you tell the court what happened?
A Around 0600 hours I left the Shop in a truck and went towards the centre of this city for about a mile. On my way back to the shop some Artillery Personnel hailed me for a drive. They said they were in a hurry and asked me how far I was going. I told them that I would drive them down a little way for about ten minutes and then turn. I turned and headed back towards the shop. I was going down the road and I heard my truck hit something. I then stopped by the road not off the pavement, got out and went around to the tail-end of my truck and saw them carrying a soldier off the road. I then got in my truck and backed it off the road on the grass, off the pavement. There was a soldier there and he left to get First Aid or a Doctor. Then came the Red Cross Ambulance. He said he had no room to take the man but would notify the nearest Soldiers' Barracks. An Artillery Sergeant came back in a 15-cwt. One Red Cross man was still there with me. The Sergeant went for the Medical Officer. He came and took over. That is about all.
Q Had you been drinking previous nights?
A A few drinks the night before.
Q How many?
A Maybe three or four.
Q What was it?
A Beer and some "hard stuff".
Q How long have you been driving a truck?
A Off and on for about three years.
Q Are you able to estimate the speed of a vehicle, in particular, a 3-ton vehicle, when you are driving it?
A Not very accurately.
Q How fast were you going when you became involved in the accident?
A About 30 miles per hour, maybe a little faster.
Q Was there any other traffic?
A No.
Q Did you expect to see a vehicle or any other object coming in the opposite direction to you?
A No.
Q Why?
A Because there is two lanes and also paths for bicycles.
Q Did any other object come from the other direction?
A No.
Q How did you find the steering on the vehicle that morning?
A Quite stiff.
Q Where in relation to the centre of the road were you driving?
A Near the centre, maybe a little off to the right.
Q Did you see this particular bicycle?
A No.
Q Have you no explanation as to how the accident occurred?
A No. I just heard the impact and then I stopped.
Q How far after the impact did you vehicle travel before you stopped?
A Roughly two hundred feet.
Q Did you know what you were doing?
A After the accident, I became quite nervous.
Q Were you upset?
A Yes.
Q Were you shaken?
A Yes.
Q How do you feel about the accident?
A Not very good.
Q Have you been involved in an accident previous to this?
A No.

The Prosecuting Officer then cross-examined the witness:

Q Have you ever driven in big Cities?
A Yes, in London, England. (P.C. I can't deny that City is big!)
Q Did you have any difficulty in London in the traffic?
A No.
Q Have you driven in big Cities other then London, England?
A Quite a lot in Rome, Florence and Naples.
Q You have had considerable experience in Cities?
A Yes.
Q Any accidents before?
A No.

Q Was this truck your usual truck? Your own?
A No.
Q Why not?
A I usually let the Orderly Sergeant take it to the Mess and bring the Sergeants back, because it had seats in it.
Q What time did the Orderly Sergeant usually go for the Sergeants?
A When we used to take it over, it used to be about 7.15 a.m.
Q And you left at 0600 hrs., and thought that you might not be back in time?
A Yes.
Q Because your own vehicle was being used to pick up Sergeants you took another vehicle?
A No. There was no driver for the truck involved in the accident and I just took it.
Q You knew that it was not your own truck?
A That is right.
Q You said you had some drink the night before?
A That is right.
Q What time did you finish drinking?
A About midnight.
Q Where did you spend the balance of the night?
A In the Camp.
Q Where?
A In the back of the truck I took out in the morning.
Q When you left here you went up-town and then you proceeded to take Artillery [illegible] in the Dordrecht direction?
A That is right.
Q On the morning you drove to Dordrecht, what lane did you drive in?
A The left-hand lane.
Q Would you think it unusual that you drove back on that same left lane, that a man might be proceeding towards you on that lane?
A No, they drive all over here.
Q But in view of the fact that you went down that lane, it would not be unusual for someone to come down that lane?
A No.
Q Approximately what time did the accident occur?
A About 7.00 a.m.
Q A witness states that the scene of the accident, just prior, that your truck swerved. What would you say?
A I would not say it swerved.
Q What would you say?
A It was going straight on.
Q On the right-hand side?
A In the middle.
Q You did not see the bicycle?
A No.
Q How fast were you going?
A About 30 miles per hour.
Q Have you driven over the road before?
A Yes, once.

The A.D.J.A. then questioned the accused:

Q You were returning in the same lane you went down?
A Yes.
Q When you say you were driving in the centre of the road, do you mean that you were straddling the centre line?
A Yes.
Q What would you say as to your condition that morning?
A I would not say I was drunk.
Q Were you sober?
A I would say I was sober.
Q What did you do from 06.10 to approximately 7.00?
A Went down-town and was driving the boys back.

ADDRESS OF THE PROSECUTING OFFICER

I think the original place to start with this address is to go back to the night before, where a man has a few drinks before midnight. Then he sleeps in the back of a 60-cwt. in preference to his own bed which is only a matter of a short distance away. The next morning at 06.10 a.m. or shortly after 06.00 o'clock he awakes and decides he must drive someplace on some errand which takes him out of the Unit and into Rotterdam a short distance, at which time he picks up some Artillery soldiers, whom he does not know. The benevolence of a soldier is to be appreciated. He proceeds to drive them home and then turns for home. I think he is still "shaking cobwebs" from his evening before. He is involved in an accident resulting in the death of another soldier. An accident, which the evidence tends to show the other soldier was well within his rights in driving his bicycle where he was. One witness on the scene states that his truck swerved from the centre to the left to run down the bicyclist, who it seems was well on his own side of the road. This witness in cross-examination, this girl, does not produce evidence concrete enough to say that the man was drunk, but she seems to believe that there was something in his behaviour that was not quite right. Another witness arrives on the scene, the Doctor, and he is almost sure there is something "fishy" but the technicalities of the law do not permit him to say the man is drunk, but who must say it is his impression. The other man does not say the man was drunk but says it is his impression that the man had been drinking. All statements are weak admittedly, but still a very competent Medical Officer felt that the man was so incapable of driving that he ordered another man to drive the truck home, possibly because he feared the consequences should this man drive any further. It is my duty to prosecute this case and try to procure evidence strong enough to get a conviction of the charge. I maintain that the negligence as shown by the driver while driving this vehicle was such as to be culpable and therefore the charge as laid should stick.

ADDRESS OF THE DEFENDING OFFICER

What we are interested in, in this court today is whether this man is guilty of manslaughter or not, not what he did the previous night. There is no doubt that the accused had been drinking the previous night, so why the prosecution stresses that point, I do not know. It is admitted, that he had been. Was the accused guilty of negligence so gross and so great that he is guilty of man-slaughter? I submit he is not. This is a criminal charge, and negligence must be so great as to be culpable.

The first witness was the Dutch girl. She stated in cross-examination and I believe her evidence, that she did not see what happened until the moment of impact. So far as speed is concerned she cannot estimate the speed. Ryan states 30 miles per hour. To a civilian it might appear fast. She also states it took two minutes to stop but he was only 75 feet from the point of impact which proves he was not going excessively fast. She states that she found him a little peculiar as though he had been drinking. Again I submit, she was right, he had been drinking, but no doubt, he was nervous and tense due to the accident. All that must be taken into consideration. Capt. Park, second witness, says he considered the accused drunk. On cross-examination he admitted that the man's appearance and even behaviour could possibly be consequences of the accident. He also stated that a man could drink and be capable of driving and driving well. So far as speech is concerned, there is a more or less a natural impediment and does not speak well at the best of times and you may well imagine what his speech sounded like after a serious accident, like the one he was involved in.

Third witness, Dumont, Private soldier on guard, who saw the accused drive out says he appeared quite normal.

Fifth witness, Smith, stated that the vehicle's steering was heavy. I would like to stress this for it is the first time the accused has driven the vehicle. If he should take his hands off the wheel for a second, the vehicle may veer. The accused cannot give any explanation for the accident so we must take every possibility into consideration. So I stress the fact that the steering may be a very potent factor in the accident.

Gnr. Brooks who drove the vehicle home says his only indication that he had that the accused had been drinking was his eyelids. I submit, that Brooks, should be sole in a warm with the accused, to have smelled the liquor from the accused. He states the accused appeared to know what he was doing and spoke to him a few words. He did speak quite logically.

We must also take into consideration the fact that there was there a bicycle path. True, the bicyclists here in Holland are not good traffic disciplinarians. What was the soldier doing at 7.00 a.m. on a bicycle? We do not know, the poor laddie, is dead but again we must take into

consideration every possibility and wonder to ourselves what the bicycle was doing on the road at that time.

I have read in my original account, the definition of Manslaughter and the amount to prove it. The Onus of Proof lies with the prosecution. If there is the slightest doubt a verdict of Not Guilty should be brought in, by the Court. The evidence produced by the Prosecution is uncorroborated. Just a young Dutch girl, who even in her evidence does not indicate that the accused is guilty of gross negligence. I would like to suggest, that at this stage of the game, a soldier who has been in the Army for four years, it would be most difficult for him if he should be found guilty and I would ask the court to be as lenient with him as possible because, in my opinion, there is a doubt and I will leave to the Court.

Lieut. G. C. Grant, of 3 C.I.B. Wksp., R.C.E.M.E. and having been duly sworn testified as follows:

Q Do you know the accused person?
A I know him as an Officer knows a Private soldier.
Q How long?
A Since the middle of February.
Q Would you give the Court your opinion of this man?
A His work has been satisfactory and he is fairly conscientious. As a driver he has a vehicle in good shape and a consistent driver in all respects. He has never been in trouble here concerning his conduct or performance of duties.
Q Has he been disciplined previously?
A No.
Q Nothing else?
A Nothing that I can think of.

DEFENDING OFFICER

Just a short statement on the accused's character. You will notice that he has been a very good soldier. He joined the Army in 1940. The only marks on his M.F.H.-6 are very minor. One A.W.L. of 43 minutes and an A.W.L. of 5 hours and 45 minutes, in a period of five years of soldiering. The soldier is thirty-one years old and the Court has seen fit to his guilt on some offence. Some punishment must be meted out. I would ask the Court, very seriously, to consider of Suspended Sentence. The accused has assured me he will volunteer for the Far East and any period of imprisonment in Detention will prevent his going to the East. He still is willing to offer his services in the East though the war in Europe is over and therefore I think that the Court should be dealing very leniently and I therefore, again very seriously, urge the Court to consider a punishment of Suspended Sentence.

SUMMING UP BY JUDGE-ADVOCATE

As The Judge-Advocate appointed for this trial, it is my duty to advise the Court upon the law relating to this case.

I wish first of all to commend both the Prosecutor and the Defending Officer for the able and conscientious manner in which they have carried out their respective duties during this trial.

If this were a civil trial by a judge and jury, it would be the function of the judge to decide the law, and the function of the jury to decide the facts. In the case of a trial by Court-Martial, however, it is the responsibility of the court-martial to decide both the law and the facts relating to the case. It is my responsibility as judge-advocate to give this court correct advice with respect to the law relating to this case. The Court are not bound to accept my advice as to the law. The Court however should do so, and should not disregard my advice as to the law, except for very weighty reasons. If the Court should see fit not to accept my opinion on any question of law, they should record in the proceedings their reasons for disregarding my advice.

I wish to make it perfectly clear in the beginning, that this Court are the sole and only judges of the facts of the case. Although I have as Judge-Advocate, not merely the right but the duty to give the Court the benefit of my opinion on any question of law arising in this case, it would be improper for me to express any opinion to this Court with respect to any question of fact arising in this case. If I have at any time during this trial said anything, or if I should at any time during this Summing-Up say anything which might in any way be construed as an expression by me of an opinion with respect to any of the questions of fact arising in this case, it is the duty of this Court to entirely disregard any such statement or statements by me.

I will now deal specifically with the points of law relating to this case. The law applicable to this case is the law of England.

BURDEN OF PROOF

This is a court of British justice and it is a fundamental maxim of British justice that the accused is presumed to be innocent until proven guilty beyond a reasonable doubt. The accused in this case does not have to prove that he is innocent; on the contrary, the burden of proving that the accused is guilty beyond a reasonable doubt rests upon the prosecution throughout the trial. By a reasonable doubt I do not mean a foolish doubt, or an imaginary doubt, or a doubt conjured up by the mind of a timid man because he is unwilling to face the grave responsibility of deciding the guilt or innocence of a person charged with a serious crime. By a reasonable doubt I mean an honest doubt which remains in the mind of a reasonable man after he has carefully considered all the evidence admitted at the trial, and with his mind absolutely and completely freed of any private information regarding the case which may have come to his attention. If after carefully weighing all the evidence, and bearing in mind throughout their deliberations that the burden of proving the accused guilty beyond a reasonable doubt rests throughout the trial upon the prosecution, a reasonable doubt remains as to the guilt of the accused, then it is the duty of the Court to find the accused NOT GUILTY. Mere suspicion, no matter how strong such suspicion might be, that an accused person may have committed an offence is not sufficient to justify a finding of Guilty against him, nor is a mere balance of probabilities sufficient to warrant a conviction. I repeat this Court must be satisfied that the accused has been proven guilty beyond a reasonable doubt, before they can find him GUILTY.

Read Sec 42 MML Page 115
Read Sec 46 MML Page 116A para 1,2,3.

In all such cases it must appear, that the death was the direct and immediate result of the personal neglect or default of the defendant.

It is no defence to an indictment for manslaughter, where the death is shown to have been caused in part by the negligence of the prisoner that the deceased was also guilty of negligence, and so contributed to his own death. ARCHBOLD Page 903.

Read to Court ARCHBOLD 905 re carriages.

Advise court that a high degree of negligence must be proved in order to establish the crime of manslaughter; the facts must be such that in the opinion of the court the negligence of the accused went beyond a mere matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the state and conduct deserving punishment.

In my opinion the court in determining whether or not the accused is guilty of negligence, and the degree of negligence, if any, should also in that respect consider the evidence as to the accused's condition - as to his state of sobriety or inebriety. If the court finds the accused not guilty manslaughter they can if the evidence so warrant and they so desire find the accused guilty of reckless or dangerous driving.

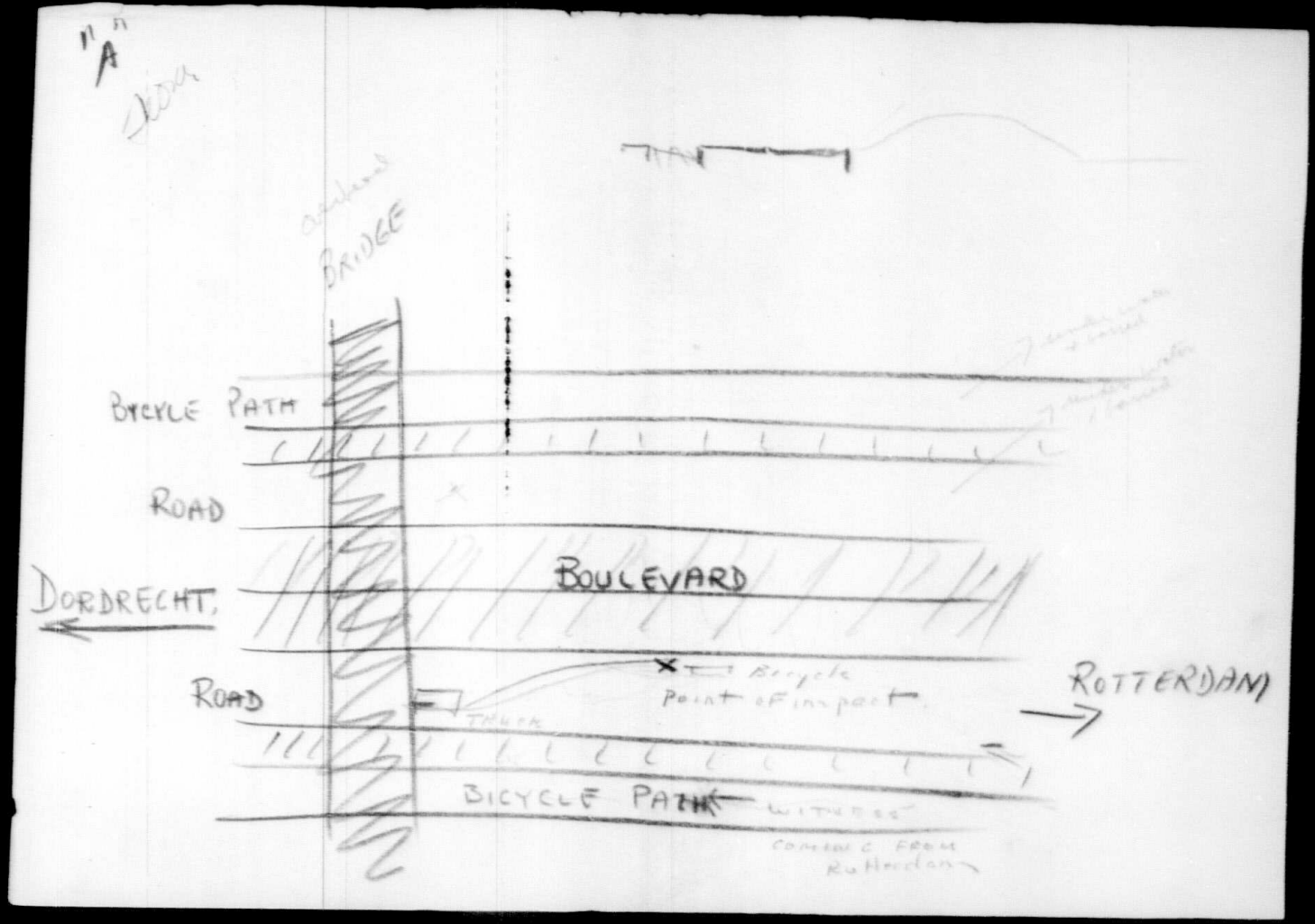
Read 24 & 25 Geo 5 c 50 s 34 Page 877 ARCHBOLD
Read the 1st para 20 & 21 Geo 5 ch 43 (Rd Traffic Act 1930) S.11 at P 968 ARCHBOLD
Read ARCHBOLD Page 906 para on Motor cars.

The court have a complete and accurate record of the evidence of each witness which it can study when considering the finding of the court and that by reason of this fact and as the evidence is not involved and also to avoid the danger of inadvertently expressing what might be considered to be an opinion by me on a question of fact arising in the case, both I and the court do not consider the summing-up of the evidence to be necessary. I sum up the case as follows:-

The prosecution claims that on the morning of 8 June the accused while driving along the NORTHAM-BUNBURY Highway so negligently drove his vehicle as to hit and kill A-J1127 Cpl [illegible] 2/4 Regt AGA. The prosecution claims that the accused was so grossly and culpably negligent as to be guilty of manslaughter. The defence on the other hand contends that the accused was not driving negligently under all the circumstances, but that if he was negligent, the negligence if any, was not of such a degree as to warrant a finding of guilty of manslaughter. As I have already said, the court are the sole judges of all questions of facts arising in the case. In weighing the evidence the court should take into consideration among other things, the manner in which the witness gave evidence before this court; the impression the witness made upon the court as to the honesty or reliability of that witness; whether the evidence given by the witness was of such a nature as to likely be true or false, in the usual course of events; the existence of any motive which might induce or influence any witness to not telling the truth. Under A.P. 7a (page 665 and) the court may take judicial notice of all matters of expediency, including all matters within their general military knowledge. The meaning of this rule is dealt with in para 10 and 11 on FI ELM page 72 which read as follows: (read para 10 & 11). I wish to make it perfectly clear however that this rule does not in any way permit the court or any member thereof to take into consideration in weighing the evidence, any private information which may have come to his attention regarding this case.

In conclusion I wish to repeat again that the accused must be presumed to be innocent until proven guilty beyond a reasonable doubt, and that if after an honest and fair consideration of the whole evidence, a reasonable doubt as to his guilt remains in the mind of the court, then it is the duty of the court to find the accused "not guilty".

Mr President do you or the court desire any further instructions as to the law - No.


"A"
Overland
BRIDGE
BICYCLE PATH
ROAD
DORDRECHT
BOULEVARD
ROAD
Bicycle
Point of impact
ROTTERDAM
TRUCK
BICYCLE PATH
WITNESS
COMING FROM
ROTTERDAM

In all such cases it must appear, that the death was the direct and immediate result of the personal neglect or default of the defendant.

It is no defence to an indictment for manslaughter, where the death is shown to have been caused in part by the negligence of the prisoner that the deceased was also guilty of negligence, and so contributed to his own death. ARCHBOLD Page 903.

Read to Court ARCHBOLD 905 re carriages.

Advise court that a high degree of negligence must be proved in order to establish the crime of manslaughter; the facts must be such that in the opinion of the court the negligence of the accused went beyond a mere matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the state and conduct deserving punishment.

In my opinion the court in determining whether or not the accused is guilty of negligence, and the degree of negligence, if any, should also in that respect consider the evidence as to the accused's condition, as to his state of sobriety or inebriety. If the court finds the accused not guilty manslaughter they can if the evidence so warrant and they so desire find the accused guilty of reckless or dangerous driving.

Read 24 & 25 Geo 5 c 50 s 34 Page 907 ARCHBOLD
Read the 1st para 20 & 21 Geo 5 ch 43 (1st Traffic Act 1930) s.11 at P 908 ARCHBOLD
Read ARCHBOLD Page 906 para on Motor cars.

The court have a complete and accurate record of the evidence of each witness which it can study when considering the finding of the court and that by reason of this fact and as the evidence is not involved and also to avoid the danger of inadvertently expressing what might be considered to be an opinion by me on a question of fact arising in the case, both I and the court do not consider the summing-Up of the evidence to be necessary. I sum up the case as follows:-

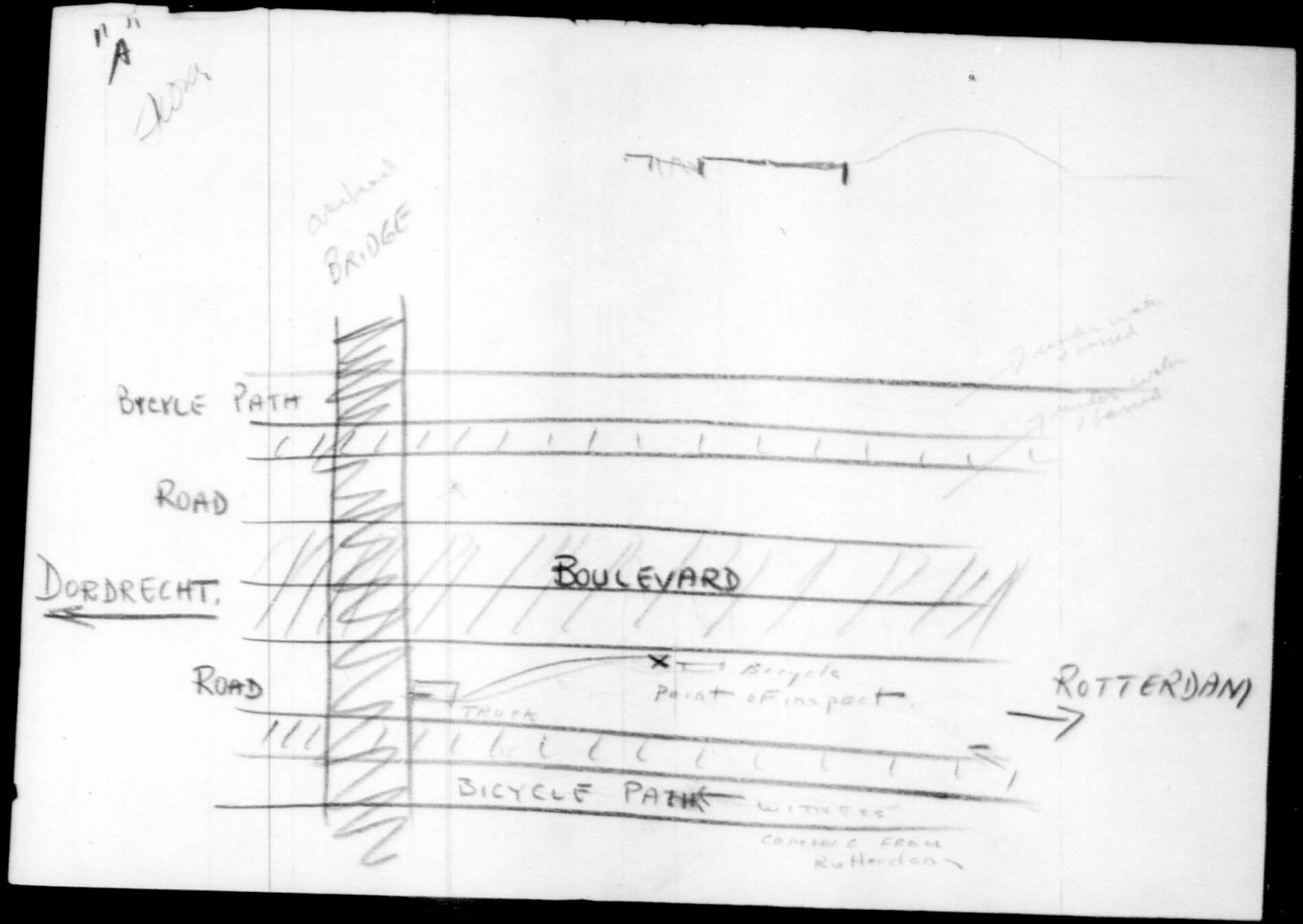
The prosecution claims that on the morning of 8 June the accused while driving along the NORTHAM-SOUTHAM highway so negligently drove his vehicle as to hit and kill [illegible] on JOWETTS, A.D. 2nd [illegible] NOW. The prosecution claims that the accused was so grossly and culpably negligent as to be guilty of manslaughter. The defence on the other hand contends that the accused was not driving negligently under all the circumstances, but that if he was negligent, the negligence if any, was not of such a degree as to warrant a finding of guilty of manslaughter. As I have already said, the court are the sole judges of all questions of facts arising in the case. In weighing the evidence the court should take into consideration among other things, the manner in which the witness gave evidence before this court; the impression the witness made upon the court as to the honesty or reliability of that witness; whether the evidence given by the witness was of such a nature as to likely be true or false, in the usual course of events; the existence of any motive which might induce or influence any witness to not telling the truth. Under R.P. 74 (page 365 ARCHBOLD) the court may take judicial notice of all matters of notoriety, including all matters within their general military knowledge. The meaning of their rule is dealt with in para 10 and 11 ch VI MIL page 72 which read as follows: (read para 10 & 11). I wish to make it perfectly clear however that this rule does not in any way permit the court or any member thereof to take into consideration in weighing the evidence, any private information which may have come to his attention regarding this case.

In conclusion I wish to repeat again that the accused must be presumed to be innocent until proven guilty beyond a reasonable doubt, and that if after an honest and fair consideration of the whole evidence, a reasonable doubt as to his guilt remains in the mind of the court, then it is the duty of the court to find the accused "not guilty".

Mr President do you or the court desire any further instructions as to the Law - No.

Mr Prosecutor - Nil

Mr Defending Officer - Nil


"A"
overland
BRIDGE
BICYCLE PATH
ROAD
DORDRECHT
BOULEVARD
ROAD
Bicycle
Point of impact
TRUCK
ROTTERDAM
BICYCLE PATH
WITNESS
COMING FROM
Rotterdam

4 Gen C.C.S., R.C.A.M.C.

AIR MAIL

9 Jun 45.

OIC, records,
3 pd Hosp., RCA

CAUSES OF DEATH:

1. Sub-arachnoid haemorrhage (small).

2. Haematoma of left lung.

3. Simple fracture of left radius and ulna.

4. Simple fracture of left femur with a large amount of haemorrhage into the surrounding tissues.

OPINION:

In my opinion, the cause of death in this man was a combination of the above lesions with some degree of shock.

L. J. [illegible] Maj
(L. J. [illegible] CHEST) Lt.-Col.,
CONSULTANT,
4 Gen C.C.S., R.C.A.M.C.

ICS/rjt

Draft

M.F.B. 355
22M—5-41 (572-6)
H.Q. 1772-30-620
A.F.B. 200

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
C.32873	Pte	RYAN, F.J.	3 Cdn Inf Bde Wksp RCEME

1. The following is a fair and true summary of the entries in the ~~service and casual~~ Regimental ~~and equipment history~~ (AB).
Conduct sheets
or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court,
Air Force Act
of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For AWL (AA Sec 15(1)	one times	AWL (AA Sec 15(1) two times
For ~~Number of instances of gallantry or distinguished conduct~~	times	times
For	times	times
For	times	times

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or, AB.

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under~~
Air Force Act A.F.A. 73
~~Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule~~
~~annexed to this statement.~~

3. The accused is not under sentence at the present time. AB.

or,

~~The accused at the present time is under sentence for beginning on the~~
~~day of~~ Age passed 2 yrs 10

4. The accused has been in confinement awaiting trial on the present charges, for ~~Nil~~ days in
~~Air Force~~ AB.
civil custody, and 12 days in military custody, making a total of 12 days in custody,
of which ~~Nil~~ days were spent in hospital.

5. The present age of the accused according to his record of service is 31 yrs. 10 mos.
~~attestation paper is~~

6. ~~The date of his commission specified in his record of service is~~ DATE OF ATTESTATION 1 Aug 40
~~attestation~~ AB. attestation paper

7. The service which the accused is allowed to reckon towards discharge is 4 yrs 10½ mos.

8. The accused is entitled to reckon ~~Nil~~ service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward (or is in possession of or entitled to). State ~~any air force~~ military decoration or reward. CVSM & C.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held
Air Force
the regimental rank of NA

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated , and in his regiment (or corps), the rank of dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion

In the rank of N/A years.

In the rank of N/A years.

In the rank of N/A years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number Rank Unit

Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 28 day of June 45 day of Roy Inf Capt Reg. B/C.M.B. Orly RCCMP.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

exhibit Y (COM).

No. G 32873 Name RYAN, P.J | Sqn., Battery or Company | Corps | Date of enlistment 1 AUG 40 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 122) (2000 - 5-41 (1760)) H.Q. (7)-41-14

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	14.5.44	PTE		WOAS AWL FROM 2215 HRS 14 MAY 44 UNTIL APPREHENDED BY CMP AT 2258 HRS 14 MAY 44 (ABSENT 43 mins) SEC 15 (1) AA	DOCUMENTARY	FORFS 5 DAYS PAY FR.I 149(2)	17.5.44	MAJOR L.F. MACDONALD	
FIELD	8.7.44	PTE		WOAS ABSENTING HIMSELF WITHOUT LEAVE FROM 2100 HRS 8 JUL 44 UNTIL 0348 HRS 9 JUL 44. ABSENT 5HRS 48 MINS AA SEC 15 (1)	J.51136 SGT LALANDER J.54761 PTE MIKALSKY D.139513 PTE COULINEAU	10 DAYS FP FORF 10 DAYS PAY FR.I (149)(2)	10 JUL 44	LT COL F.B. CONRAD	

Certified true copy: [signature] Maj for
17 Jun 44.

Lt. A.A. 3 C/B with [illegible]

Summary of Evidence in the case of

G 32873 PTE RYAN P.J. 3 CDN. INF. BDE. WKSP R.C.E.M.E.

By direction of the ~~C~~commanding Officer, the evidence is taken on oath.

First Witness B 79178 Sgt Cooke G.E. 3 Cdn Inf Bde Wksp R.C.E.M.E. sworn states

Examined by Sgt Cooke G.E. 3 CIB Wksp

I am B 79178 Sgt Cooke G.E. and I certify that Pte Ryan P.J. was not on authorized driving duty between the hours of 0530 to 0800 hrs on Friday 8 Jun 45. The damage to the vehicle was on the left front fender which was slightly bent under, there was no other damage to other parts of the vehicle that I know of.

The accused declines to cross-examine the witness

Sgt G.E. Cooke

Second Witness

L 154214 Cfn. Dumont A 3 Cdn Inf Bde Wksp R.C.E.M.E. sworn states:-

I am L 154214 Cfn Dumont A of 3 Cdn Inf Bde Wksp and was on guard when the accused drove out of the gate at 0610 hrs 8 June 45. He drove up to the gate and stopped and asked me to open the gate which I did. I dont remember which way he turned.

The accused declines to cross examine this witness

A. Dumont

Witness
Miss Catzina Adriana Kruin
Koningenmestraat 1 Oud Dordrecht,
sworn states through an interpreter Pte Kremer
J. H 64870.

~~Coming~~ I am Miss Catzina Adriana Kruin and on Friday 8 June 45 I was coming from Rotterdam (the direction) and saw a Canadian soldier on a bicycle also coming in the same direction and a military truck came from the direction of Dordrecht. The soldier on the bicycle was riding on the right hand side of the road, the truck was ~~riding in the centre of the road~~ (more on the left hand side of the road than was made) When they came together the truck swerved towards the left and hit the soldier on the bicycle, the soldier and bicycle were thrown to the side of the road and ~~stayed~~ lay there. The soldier moved a little * The driver of the truck stopped, looked and was about to step in again when an English soldier came along and stopped him from driving off. Then a vehicle of the N.B.S. came, it was stopped and they went ~~for a doctor~~ to the Canadian soldier who in turn went ~~for a doctor~~ to the scene of the accident and then for a doctor. (the vehicle was travelling fast and after impact took about 75 meters. *

The accused declines to cross examine this witness

C.J. Penna

Capt A.M. Park Medical Officer of 3 Fld. Regt. R.C.A. sworn states:

I am Capt A.M. Park Medical Officer of 3 Field Regt R.C.A. I was called at approximately 0700 hrs to see what I was told was a serious accident. I gathered my necessary equipment and my orderlies and proceeded to a place on the autobahn where the accident occurred. Upon arrival we found the body of the deceased identified by papers in his pocket as A-31107 Gnr. Johnston A.J. 3rd F. d Regt propped up on the bank on the left side of the road as we approached. He was already dead. A cursory examination of the body revealed that he had suffered severe compound fractures of the left thigh and left arm. The body was placed in a vehicle. I questioned the driver of a 60 cwt no. C.L. 4273306 who identified himself to me by presenting his paybook as Pte Ryan P. J. of 3 C I Bulkop. He was unable to tell me anything of the circumstances of the accident he appeared confused, unsteady, and in my opinion was definitely under the influence of alcohol and in no fit condition to drive. I examined the truck no C.L. 4273306 and found that the left front fender was ripped

and beat and we believed this to be the point of impact of the body. We picked up a bicycle with a badly bent + smashed front wheel identified by a civilian witness as the bicycle on which Gnr. Johnston was riding. We then questioned a lot of civilians standing by and one Jot Adriana Pruim stated that she had been the only witness to the accident. She was brought to the vehicle + returned to the unit H.Q. for questioning and a statement from my drivers drove the 60 cwt with Pte Ryan as passenger to 3 C I B W Kop. I went in and reported the accident to an Officer in the Orderly room of 3 C I B W Kop. and suggested that Pte Ryan be placed under arrest on a charge of drunkenness. There were no tire marks or other marks at the placed of accident to given any clues as to what happened. We went to 4th Fd Ambulance for a stretcher jeep and brought the body to C H.Q. 3 Fd Regt R C A. where its disposal was discussed. It was decided that in view of the lack of evidence of fatal injury on external examination that a post mortem should be held to definitely establish the cause of death and the body was taken to 4 C C S. in Amsterdam where an autopsy was performed by Major Johnston on Sat. We have not yet received a report.

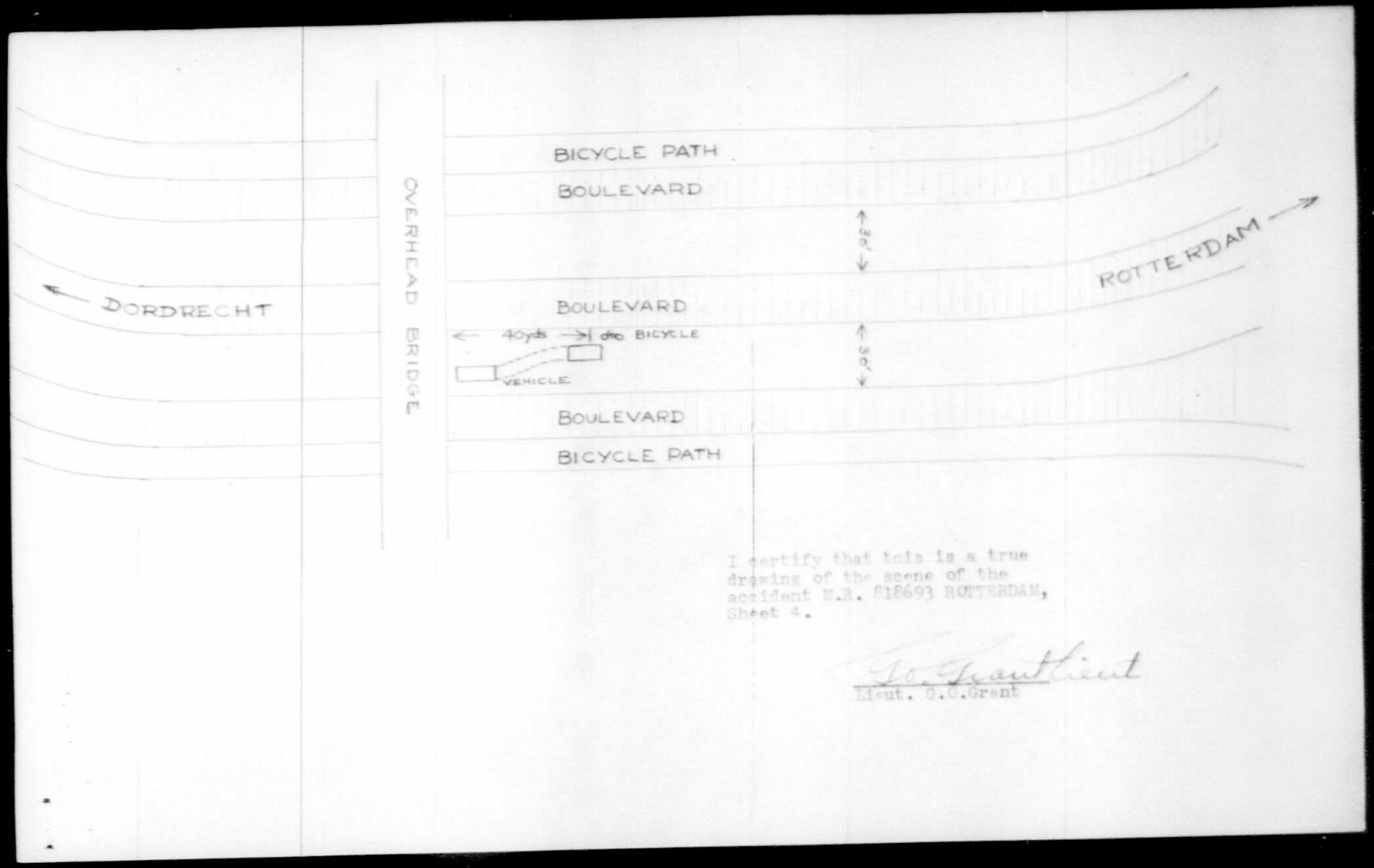
The accused declines to cross-examine the witness

I certify that in my opinion the attendance of this witness is, owing to the absence of this Officer on draft to Canada not readily procurable and a written statement of his evidence signed by him in the presence of the accused is attached hereto ~~as Exhibit A~~.

C.O. Grant

I certify that the foregoing Summary of Evidence consisting of ~~two~~ six pages was taken down by me in the presence of the accused and that RP 4 (C), (D), (E), (F) and (G) (13) have been complied with.

C.O. Grant



I certify that this is a true drawing of the scene of the accident M.P. P18693 ROTTERDAM, Sheet 4.

G. Grant Lieut.

Lieut. G.C.Grant

Supplementary Summary of Evidence in the case of 32813 Pte Ryan, P.S., 3 Corps Amn Bde Wksp, R.C.E.M.E.

By direction of the Commanding Officer the evidence is taken on oath.

Fifth Witness

D 132557 Gnr Brooks, R., 3 Corps Fld Regt., R.C.A., sworn states:-

I am D132557 Gnr Brooks R, driver of R.A.P vehicle for 3 Fd Regt R.C.A. On the morning of 8 June 45 at approx 0745 hrs, ~~I drove the~~ vehicle accompanied Capt. A.M. Park, Med Offr. 3 Fd Regt to the scene of an accident which occurred on the Rotterdam Dordrecht highway. On arriving at the scene of the accident Capt Park examined the injured man A 31127 Gnr Johnston. A.J., 3 Fd Regt R.C.A. and found him to be dead. I was then detailed by Capt Park to drive the R.C.E.M.E. lorry back to the workshops which I did. as Capt Park said Pte Ryan was not in fit condition to drive the vehicle back. My impression was that Pte Ryan had been drinking and was

in no condition to drive because he was dazed and appeared to know little of what was going on.

~~The accused declines to~~ Maj Jupp Capt

Cross examined by accused:-

Q. How did you find the vehicle steered?

A. I found the vehicle when driving it, very difficult to steer.

A Brooks

Sixth Witness

M 3322 Bdr Shields, R.C., 3 Cdn Fd Regt R.C.A., states:-

I am Bdr Shields R.C. Medical Orderly for Capt. A.M. Park, 3 Fd Regt, RCA. I accompanied Capt Park to the scene of an accident at about 1745 hrs 8 June 45. A31127 Gnr Johnson was lying on the bank of the road already dead when we arrived. The vehicle that struck him was a 30 cwt from R.C.E.H.E. The driver of the 30 cwt was there walking about in Pte Kilgour
a dazed condition. The accused I now

recognize as being the driver of the vehicle that struck Pte Johnston. Capt Park instructed Pte ~~Proctor~~ to Brooks to drive the RCEME 60 cwt and driver back to his unit.

The accused declines to cross-examine the witness.

R G Hall

Seventh Witness

K 83065 A/S/Sgt Smith J.E.W., NCO i/c R.O.I., 3 Can Inf Bde Wksp, RCEME, ~~[illegible]~~ states:

On 8 June 45 I was asked by A&HS Taylor E.A. to road-test Ford 60 cwt, W.D. No. CL 4273306 for its mechanical performance. I found the lorry to be in a serviceable condition. The only defects noted were that the steering was heavy & the speedometer was nf. The left front fender was slightly bent back.

The accused declines to cross-examine the witness.

J.E.W. Smith

The accused was cautioned as follows:

Q Do you wish to say any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be give in evidence.

A No

The accused does not call any witnesses.

I certify that the foregoing Supplementary Summary of Evidence, consisting of four pages, was taken down by me in the presence of the accused and that R.P. 4(c), (d), (e), (f) and (6) have been complied with.

A.K. Cay Supp Capt
3 Cdn Inf Bde Wksp

In the field
14 June 45

NOTICE PURSUANT TO R.P. 76

Re: G.32873 Pte. RYAN, P.J.

Take note that the prosecution intends to call Major L.G. Johnson, 4 Cdn C.C.S., RCAMC, at the Court Martial of Pte RYAN, P.J. as to the cause of death of Gnr. Johnson, A.J., 3 Fld Regt, R.C.A.

A.D.C. Supp Capt
Prosecutor

LLC-49

TPR RYAN T.J

RECORDED AT CMHQ IN AB 160: 222-49

FIELD GENERAL COURT-MARTIAL

CFA86 (1st Impl of AFA3)
S.P.G. 8/1608 (2804)

Convened by Order of Brig. T. J. Rutherford Comd 1 Can Sy. Gru dated 15 May 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
[illegible]	Tpr		Thomas Joseph	RYAN	1 CAGRU

PROCEEDINGS REVIEWED 27 May 44

R. Dean Wills
Capt.

PROCEEDINGS OF TRIAL.

Held in ~~the~~ FD in *(country)* CONVENING OFFICER, JAG BRANCH G.M.H.Q. on *(date(s))* 19 May 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any,~~ and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate [illegible] See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ at liable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are) brought~~ before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President (to accused) Do you object to no interpreter ? Ans~~

~~The interpreter is sworn.(1)~~ Do you object to PS6126 SGT SINCLAIR, A.H. as shorthand writer ? Ans No, Sir. The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No, Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any,~~ and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-col	D.I.	RHIMAN	H.Q. GRU
Member	CAPT	J.E.	FUGER	1 CAGRU
Member	Lt	R.B.	PARTRIDGE	1 CAGRU
~~Judge-Advocate~~				
Prosecutor	Lt	L.A.	GALLAY	3 CAGRU
Defending Offr	Lt	N.J.	WEINER	3 CAGRU

Questions by President: Is the Prosecutor a lawyer ? Ans No. Is the Defending Offr a lawyer ? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment make(s) (no) (~~s~~) plea

(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~respectively~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "D"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(II).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination, and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) & 37 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If no plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans No, Sir. .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes ~~an~~ (no) opening address.(1)
(1. *RP 39(B), 60(A) (8), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1) NOTE-ATI
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 1st and 2nd charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the 1st and 2nd charge(s), ~~and allowed on the charge(s)~~, and that, accordingly, the trial will proceed ~~on the former, but the accused is (are) found Not Guilty on the latter charge(s)~~.(4) NOTE-ATI
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)*
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans To Make Evidence. Do you intend to call witnesses on your behalf? Ans Yes Sir. Are they witnesses as to character only? Ans Yes - Sir
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF AF6. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*) NOTE ATI

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court ~~is~~ (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)~~

OR

D9. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

~~D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.~~

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans .....(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 7(D). One sentence only comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 44(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly one disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : ~~A~~ Sgt(No) Tpr Thomas Joseph RYAN, 3 CAC(Res)

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 3(2)	Not Guilty	not Guilty	
2nd AA Sec 15(1)	Not Guilty	not Guilty	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and re loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on ~~(date)~~ .....(1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

Accused was released

(Sgd) ..... Judge-Advocate, if any. Date ~~of sentence~~ 19 May 44 (Sgd) ..... President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) .....

Date ..... Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

The accused elects to be tried by Court Martial

CHARGE SHEET

The accused, No. A.59440 Trooper Thomas Joseph RYAN on strength of No. 3 Canadian Armoured Corps Reinforcement Unit, a soldier of the Canadian Army Overseas is charged with

FIRST CHARGE
AA SEC 9 (a)

WHEN ON ACTIVE SERVICE, DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

in that he

at in the Field did not report to No. 3 C.A.C.R.U. Guard Room, Block 3, for Guard Duty after having been ordered by B.67236 SSM McAlister, J., of No. 3 C.A.C.R.U. to do so.

SECOND CHARGE
AA SEC 15 (a)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

at in the Field did absent himself without leave from 1930 hrs, 6 May 44, until he surrendered himself at 1100 hrs, 7 May 44. (Total time absent 15 hrs, 30 mins).

In the Field
13 May 44

(G.W. Little) Colonel
Commanding
No. 3 C.A.C.R.U.

To be tried by Field General Court Martial.

In the Field,
15 May 44.

[illegible]
Cond 2nd Gp, CAC.

IW

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40/PAM/1697 (2008)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A-5944()	Tpr		Thomas Joseph	RYAN	1 CACHU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 18 May 44 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have~~ attached hereto. ~~N~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereof the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt.-Col	D. L. Bechan, VD	H.Q. CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by OC 1 CACRU	1 CACRU
Lt	to be detailed by OC 1 CACRU	1 CACRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

J. Rutherford (Signature of convening officer, RP 105 fn 2.) Brig (Rank.)

(T. J. RUTHERFORD) Brig

Date 18 May 44

Commanding "B" Group, CRU,
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MM

Medical Officers' Certificate
KR(Can) para 557.

I certify that I have this morning examined:-

Regt'l No. A59440. Rank Spr. Name Ryan T. J.

of # 3C.A.C. R.U. (unit) and in my opinion he is

Fit to undergo trial by Court Martial.
~~Unfit~~

#(cross out one F/A and initial)

Station: Zeila

Date (of Court Martial) May 19/44

Sgd ..... (Rank)
Unit
Medical Officer, RCAMC.

19 May 44

CASE OF

A.59440 Tpr RYAN T.J., 3 CAGRU

D/3 -PROSECUTION-

FIRST WITNESS

B.67256 A/SSM MacALISTER J, 3 CAGRU, having been duly sworn, states:

On the evening of 6 May I went to the Garrison Cinema Canteen at approx 1845 hours. The accused, whom I now recognize, was at the NAAFI Bar. He was sitting there with another trooper, Tpr Wuest. I took their names down and told them that they would report to the Guard Room immediately for guard duty. About an hour later I went to the Guard Room to check to see if the guard was complete. Tpr Ryan did not report for duty. The following morning I contacted QFL Smith and as a result of the conversation I had with him I contacted Tpr Ryan who was carrying some of his equipment at the time. The time then was about 1100 hours. I asked him why he had not been on guard and he stated that he slept in one of the spider huts. I then placed him under arrest on two charges, one, because he did not report for guard, and the other for AWL. He stated that he slept in "A" Spider which belongs to the Admin Wing.

Q. At the time you ordered him to report for guardy did he make any remark to you?
A. He says "how's chances of buying a drink before going on guard?"

Q. Could he have failed to understand the nature of your command?
A. No, Sir, he was not drunk, and could understand.

CROSS-EXAMINED

Q. How long have you known the accused by sight?
A. Approx 8 yrs, Sir.

Q. Have you ever seen him drunk, and if so, how do you know or did you know he is or was drunk?
A. Yes, I have seen him drunk, and I've seen him helped into bed, Sir.

Q. At the table which he was sitting, what is it used for?
A. Some use to sit and drink, some use it to wait for the show to go in. He was sitting at this table with a beer glass in front of him. I don't know if there was beer in it or not, but he came after I told him right out of the theatre with me. He went to pack his small pack. The last time I saw him he was going towards the quarters to go on guard duty.

Q. He did not complain about being detailed?
A. No, Sir.

QUESTIONS BY THE COURT

Q. In your opinion Sgt-Major would you say he was sober enough to go on duty as guard?
A. Yes, Sir.

Q. Why was the guard not detailed at an earlier hour?
A. The slip-up was in the Admin Wing, Sir, and I was detailed to detail 8 men.

Q. When did the guard mount?
A. 1900 hours.

Q. Did you attempt to find him when you found him not present?
A. No, Sir.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

SECOND WITNESS

B.11668 Cpl SMITH W.J., 3 CACRU, having been duly sworn, states:

On the evening of 6 May 44 I had conversation with the accused whom I now recognize. At 1920 hours I was talking to him in Block 2, Room 1 of the barracks. He was getting his small pack ready to go on guard and told me when calling the roll not to mark him absent as he was going on guard and was late now as it was.

Q. Did you call the roll?
A. Yes, Sir.

Q. Was he absent?
A. Yes, Sir.

Q. Did you call it at reveille?
A. Yes, Sir.

Q. Was he absent?
A. He was absent.

Q. Did you notice any appearance of drink?
A. Yes, Sir, he had been drinking.

CROSS EXAMINATION

Q. Would you say he was sober when you saw him and were talking to him?
A. I could not say that, Sir.

Q. Was he drunk?
A. He had been drinking, Sir, but I could not say if he was drunk.

Q. I will read a part of your statement from the Summary Cpl Smith and you say "he had been drinking and appeared to be worse off for it".
A. Yes, Sir, I said that - he had a few drinks it seemed to me.

Q. Did it look to you as if he did not want to go on guard?
A. No, Sir, he had the small pack almost ready to go on guard.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

THIRD WITNESS

A.59686 Tpr WUEST R.F., 3 CACRU, having been duly sworn, states:

Q. Were you warned for a guard on the evening of 6 May 44 at about 1845 hours by SSM McAlister?
A. Yes, Sir. I was in the Garrison Canteen with Tpr Ryan at the time.

Q. What did you do when warned for guard?
A. I went outside and told the girl friend I could not go to the show with her.

Q. What was the exact instruction given to you by SSM McAlister?
A. He did not give me any definite instruction at all, Sir. At the time he said in the canteen he said he had a special duty for me. I went outside and told the girl friend and he came out later and told me it was guard duty.

Q. Would you say that both of you had been drinking very heavily?
A. I just had one glass, Sir. Tpr Ryan had been drinking very heavily. When we had a glass he was feeling a little under the weather.

CROSS-EXAMINED

Q. When SSM McAlister came into the barroom did he tell you you were warned for guard duty?
A. No, Sir. I went outside, he followed me out and said "report over to the Guard Room for guard duty". I came out alone. I did not hear SSM McAlister warn the accused for guard duty. We were both drinking at the table when he came in.

Q. What was the condition of the accused?
A. The condition of the accused, Sir? --- he had been drinking quite a bit I could tell. As soon as I came in he slapped me on the back and said "how about a glass of beer". He doesn't usually do a thing like that. He was sort of lazy like, his speech not being very plain.

QUESTIONS BY THE COURT

Q. What words did you hear the Sgt-Major utter while you were with the accused?
A. All he did, Sir, when he came in he said, or told rather, "Tpr Ryan and Tpr Ruest, I got a special job for you".

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

THE PROSECUTION IS CLOSED

b-4

SUBMISSION BY THE DEFENDING OFFICER OF NO PRIMA FACIE CASE

The Defending Officer submitted that the Prosecution had failed to make a prima facie case for the following reasons:

First, the only evidence submitted that the accused was warned for guard is that of SSM McAlister's own statement. Secondly, under Sec 9 of the Army Act, Note 1, para 2, it states definitely an omission arising from misapprehension or forgetfulness is not an offence under this section. Nor is the act of a soldier who declines to sign his accounts upon the ground that they are incorrect. Nor is failure to obey a command where obedience would be physically impossible. Now, the evidence as submitted by the Prosecution, primarily it leads to the point that the accused was not in full possession of his faculties, and also evidence brought out by the Prosecution points to the fact that the accused did attempt to carry out this duty after he had been warned for it. What happened afterwards we do not know, but had every intention of going on duty if it is true that he had been warned, but it was impossible for him to go on that duty.

PROSECUTOR'S REPLY TO THIS SUBMISSION

The Prosecutor stated that in his opinion the submission of the Defending Officer should be disallowed as a prima facie case had been made.

THE COURT IS CLOSED TO CONSIDER THE SUBMISSION

THE COURT REOPENED AND THE PRESIDENT ANNOUNCED THAT THE SUBMISSION HAD BEEN DISALLOWED.

D-5 - D E F E N C E -

FIRST WITNESS

The accused, A.59440 Tpr RYAN T.J., 3 CAGRU, having been duly sworn, states:

Q. Tpr Ryan on the night of 6 May 44 where were you?
A. In the Garrison Cinema bar drinking, Sir. I got in there around 6 o'clock. Was drinking bitters. From 6 o'clock to the time the SSM McAlister spoke to me I would say I had 6-7-8 pints. I faintly remember SSM McAlister coming in to the bar and speaking to me, as a matter of fact, I don't remember him speaking to me.

Q. Do you remember leaving the bar?
A. No, Sir. The next thing I remember is when I woke up next morning around 10 or 10.30 in "A" Spider Hut. I got dressed and came up to Block 2 where I met Cpl Smith and SSM McAlister.

Q. Were you carrying anything at the time?
A. Not that I remember, Sir.

Q. What did SSM McAlister say to you when you saw him that morning?
A. He asked me where I had been and I told him I had been sleeping in Spider Hut, and he then placed me under arrest.

CROSS-EXAMINED

Q. Do you remember going to Block 2 and preparing your equipment, and telling Cpl Smith you were going on guard?
A. No, Sir.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

SECOND WITNESS

C.75701 Tpr CLARKE J.B., 3 CAGRU, having been duly sworn, states:

Q. Do you recognize the accused?
A. Yes, Sir. I saw him on the 6th and 7th May 44. I saw him in "A" Spider barrack room, Room 13.

Q. Was he under the influence of liquor.
A. He was under the influence of liquor on 6 May 44 at approx 2200 hrs Sir. I came into my barrack room and he was below my bunk. I talked to him and he did not talk to me. I asked him if he was going up to his hut and he just slurred his words in answer to me. The next morning I saw him going out and he told me he was going to see what happened to him the night before.

Q. You say he was under the influence of liquor the night before?
A. Yes, Sir, I would even say he was drunk.

CROSS-EXAMINED

Q. Did you see him at 1845 hours the night before?
A. No, Sir.

Q. You didn't see him at 1845 hours?
A. No, Sir.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

DEFENDING OFFICER ADDRESSES THE COURT ON THE FINDING

I would like to point out the fact on behalf of the accused that the evidence submitted by both the Prosecution and the Defence shows definitely that the man was not sober. He either has to be sober or drunk, but there has been no evidence to prove any definite point in that he was between the two. The Prosecution has not proved that he was definitely sober. Maybe the words did register on his subconscious mind, but having drank that much liquor, that takes a little time to work on him and may have gotten the best of him and he forgot about going on duty. This accused should not be charged under the Section of the Army Act that he has been charged and therefore he cannot be found guilty. With regard to the absence without leave, if the man had been drinking a lot it was not fair to place him on a job of that sort. There were probably lots of other people around who could have been detailed for guard that evening - sober people, and this accused who was under the influence of liquor should not have been detailed for that duty in a canteen. I would like to point out the fact that the [redacted] charged with being absent from 1900 hours 6 May 44. If he was under the influence of liquor, therefore that amount of absence without leave cannot be proven, which makes a good defence.

THE PROSECUTOR ADDRESSES THE COURT ON THE FINDING

The Prosecution feels that the evidence as pointed out was not due to forgetfulness. We have heard the evidence of a senior Warrant Officer that the accused was warned for duty, and the evidence of an NCO that the accused reported to his hut and made preparations to go on duty, and the opinion of both these witnesses he was in a condition to go on duty. It has been shown that he was drunk at a later hour, granted, but the Prosecution has shown that he was in a condition to go on duty at an earlier hour. After hearing the said warning and by preparing for that duty I therefore contend he is guilty of the offence under the section of the Army Act he has been charged. With regard to the second charge under AA 15(1), the Prosecution has shown that the accused was absent from the guard when it was mounted at approx 1900 hours and that he did remain absent from his duty and from his proper quarters until 1100 hours 7 May 44. On the testimony of the Cpl in charge of his hut he was absent from both tattoo and reveille roll calls, but was not so marked because he was presumed to be on guard, from which he was also absent, therefore I also contend [redacted] second offence as charged.

THE COURT IS CLOSED TO CONSIDER THE FINDING.

LIST OF WITNESSES IN THE CASE OF

A59440 Tpr. Ryan, T.J.

FOR THE PROSECUTION

1. B67236 SSM McAlister, J. - No. 3 C.A.C.R.U.
2. B11648 Cpl Smith, W.J. - No. 3 C.A.C.R.U.
3. A59686 Tpr Wuest, R.P. - No. 3 C.A.C.R.U.

FOR THE DEFENCE

NIL

I, A59440 Tpr. Ryan, T.J., do desire ~~do not desire~~ to have an officer assigned to defend me at my trial by Court Martial.

I desire the services of Lt W.J. Weiner if this officer is available.

T J Ryan

(A59440 Tpr Ryan, T.J.)

Summary of Evidence in the case of No. A59440 Tpr. Ryan, T.J. on strength of No. 3 Canadian Armoured Corps Reinforcement Unit, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be given on oath.

First Witness for The Prosecution

B67236 SSM McAlister, J. on strength of No. 3 C.A.C.R.U., a soldier of the Canadian Army Overseas, having been duly sworn, states:-

At approx 1845 hrs on 6 May 44 I contacted Tpr. Ryan, whom I now recognize before me, in the canteen of the Garrison Cinema.

I took his and Tpr. Wuest's name and said "You will report to Guard Room Block 3 for duty on unit Guard right away".

On checking the Guard at 1900 hrs Tpr. Wuest was present, Tpr. Ryan was absent. He remained absent from all roll calls until 1100 hrs 7 May 44.

On being questioned he stated that he had slept in another Barrack Building i.e. one of the spider huts, during the night of 6 May 44.

At approx 1100 hrs 7 May 44 the accused, Tpr. Ryan, reported to me personally outside of No. 2 Block, I immediately placed him in close arrest.

The accused declines to cross-examine this witness.

(B67236 SSM McAlister, J.)

Second Witness for The Prosecution

B11648 Cpl Smith, W.J. on strength of No. 3 C.A.C.R.U., a soldier of the Canadian Army Overseas, having been duly sworn, states:-

At 1920 hrs 6 May 44 I was talking to Tpr. Ryan in Room 1 of Block 2 where he was working on his small pack and he told me he was going on guard.

He had been drinking and appeared worse off for it.

The accused declines to cross-examine this witness.

(B11648 Cpl Smith, W.J.)

Third Witness for The Prosecution

A59686 Tpr. Wuest, R.P. on strength of No. 3 C.A.C.R.U., a soldier of the Canadian Army Overseas, having been duly sworn, states:-

Third Witness for The Prosecution (cont'd)

At 1845 hrs 6 May 44 I was drinking beer with Tpr. Ryan when SSM McAlister came into the Canteen and said he had a special job for us. I left to cancel a date with my girl so do not know if Tpr Ryan acknowledged SSM McAlister's order or not. Outside SSM McAlister told me to report to the Unit Guard Room for duty which I did.

The accused declines to cross-examine this witness.

Jez R Wust
(TA59686 Tpr. Wuest, R.F.)

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to give evidence on oath or to make a statement.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (C), (D), (E), and (F) have been complied with.

S Besen (S1)
(S. Besen) Lieut.
Officer detailed to take
The Summary of Evidence

In the Field
10 May 44

56-1

Kfm. Ryan, T. G.

FIELD GENERAL COURT-MARTIAL

52-1

CFA66 (To form of AFA21 40/P & R/1898 (1))

4/388

Convened by Order of Brig J G SPRAGGE Comd 7 Cdn Inf Bde dated 5 Feb 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
L27912	Rfn	Thomas Clarence James	RYAN	Regina Rifles

CERTIFIED TRUE COPY

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) HOLLAND on (*date(s)*) 26 FEB 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

24/22

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1345 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: Do you object to ~~the interpreter is sworn(1). Do you object to the shorthand writer is sworn~~(1) as interpreter I Ans

as shorthand writer I Ans

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans YES (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	J W G Thompson MM ED	RCA	
Member	Major	N L TROY ED	CIC	
Member	Capt	K F GARDEN	CAC	
~~Judge Advocate~~				
Prosecutor	Lt	J H ROWEY	CIC	REGINA RIFLES R
Defending Offr	Capt	D C HOWAT	CIC	REGINA RIFLES R

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Cmdr. Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 3.)

A8. The accused L27912 Rfn Ryan T C J before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 106), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cite1. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, PP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "D"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B); and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on .....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on .....charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any pleas standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here. Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans.....

Do you intend to call witnesses on your behalf? Ans.....

Are they witnesses as to character only? Ans.....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(c).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans.....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused at 2 witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex..... and Ex..... respectively.(3)
(1. *MFB 255 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1, para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans.....(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 128, 182, RP 46-52, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: L2/912 Rfn Ryan T C J

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 40	NOT GUILTY	NOT GUILTY	NOTED (T Wilson) Brig per C Thomson
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ~~[illegible]~~ beginning on (date) (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial ~~is~~ a total of ~~[illegible]~~ days, of which ~~[illegible]~~ days were spent in hospital (1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: -

(Sgd) .....
Judge-Advocate, if any.

26 Feb 45
Date awarded.

(Sgd) (JHG Thompson) Lt Col
President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I direct that the accused be not committed to prison or detention barracks until further orders. (1)
(1. AA 57A. Delete if not used.)

(Sgd) .....

Date .....

Commanding .....
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

"JNGT"

CHARGE SHEET

The accused, L27913 Rfn Thomas Clarence James RYAN, 1 Bn The Regina Rifle Regiment (attached 11 Cdn FDS) a soldier of the Canadian Army Overseas, while on active service,

is charged with

First Charge
Sec 40 A A — NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field, on 13 Jan 45, at approximately 1900 hrs, so negligently handled a pistol as to cause it to be discharged and thereby injuring his left thigh and rendered himself unfit for service.

In the field
20 Jan 45

"J B Bundock" Major RCAMC
Offr Comd 11 Cdn FDS

To be tried by Field General Court Martial.

5 Feb 45

"J B Sprague" Brig
(Convening Officer)

"JWCT"

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
B-79112	Rfn		Thomas Clarence James	RYAN	Regina Rif

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 5 Feb 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. ~~And whereas I am of opinion that it is not practicable that such~~ offence(s) ~~should be tried by an ordinary General Court-Martial, (and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ JS
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ JS
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
LT COL	J W G THOMPSON	RCA

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
MAJOR	M L TROY	CIC
CAPT	K E GAREN	CAC

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
CAPT	L A GIBSON	CIC

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in HOLLAND "J G Spragge" Brig
(Country.) (Signed personally. RP 105 fn 2.) (Rank.)

Date 5 Feb 45 Commanding 7 Cdn. Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAAS (In lieu of AFAS) 40-F & S/1697 (4951)

(See overleaf for oaths and notes for use on trial.)

This is to certify that I have this day examined L27912 Rfn RYAN and find him fit to undergo trial by Field General Court Martial, on a stretcher. ("JWGT")

"J McN Corston" Capt
Medical Officer

Date Feb 26/45
Time of signature 1245A

rded Proceedings

(1) Defence addresses court on objections to the President, Lt-Co G THOMPSON MM ED:

Address att. Objections considered and disallowed by Major M L Troy and Capt K F Garen

(2) Defence addresses court on objections to the member Capt K F Garen

Address att. Objections considered and disallowed by Lt-Col J W G Thompson and Major M L Troy.

(3) Defence addresses court on objection to the member Major M L Troy ED

Address att. Objections considered and disallowed by Lt-Col J W G Thompson and Capt K F Garen

D 3 First Witness for Prosecution: L27522 CSM Wood I J, "SP" Coy 1 Bn Regina Rif R.

I know and recognize the accused of the SP Coy Regina Rif. On the night of 13 Jan 45 at app 1900 hrs I was in the Sgts Q and CQMS Holt rushed into the room and from information I received I proceeded to the accused's quarters. I saw the accused lying on a bed and being attended by a member of the RCAMC. I inquired if the RMO had been sent for and checked the time by my own watch, it was then 1903 hrs. I posted sentry's on each door to make sure no one left the room, Capt Luxton the Coy OC entered at this time and took over the investigation. I then lined up all present and Capt Luxton took their names. A search was made for the weapon that the accused was shot with and the accused platoon sgt reached under the bed that the accused had been lying on and produced a .38 S & W pistol. I now forget the number of that pistol. The pistol was handed to Capt Luxton and Capt Luxton handed it to me, I smelt the pistol and I would say that it had been discharged very recently. Capt Luxton took the pistol into his custody. I made aninquiry and the accused was authorized to carry a pistol. The pistol I examined, that is the pistol in question, had a number, and the number corresponded with the issue entry in the accused service book. I saw the pistol picked up by the platoon sgt and it was in such a position that in my opinion it could have been dropped there by the accused or anyone.

Cross Examined: I am not a qualified amn examiner. I would say it was only a matter of minutes from the time the pistol was fired and I smelt the barrel.

The Court: On examination I found one expended and five live rounds in the cylinder. I did not examine the mechanics of the pistol. It was not bright in the room but there was sufficient light to see. The regt. was not in the line at the time. I did not have conversation with the accused. I do not know of any conversation that took place in the presence of the accused regarding the facts of his injury. The accused was employed as a DR.

RP 83 (8) complied with.

Second witness for Prosecution: L27729 Cpl Clark A 3 Sec 4 Pln "SP" Coy sworn states:

I know and recognize the accused of Sp Coy. I was playing cards with Rfn Dotzler, Rfn Court and the accused in own billets, in a large room. We were playing on a bed spring and the game was hearts. It was in the evening, after supper and I was score keeper and as I was recording the score I heard a shot, I looked up and noticed the accused had been shot, and the accused said "get a tourniquet", and "Get a shell dressing", a crowd gathered around and I was pushed into the background. Capt. Luxton arrived. The accused was still in the game at the time of the shot. I did not see the accused with a pistol in his hands. It was just a matter of minutes from the last time I actually saw the accused and when I heard the shot. I did not hear at any time, the accused say, 'he was going to clean his pistol.'

No Cross Examination

Court: The accused was sitting opposite me during the game. The accused was sitting on a bench. Rfn Court was sitting on the same bench or another bench. The report sounded very close. To my knowledge Dotzler did not fire the shot, I think Court was dealing the cards, I was recording the score. The accused was put on the bed that we had played cards on. It was app. 1900 hrs. A guard was to be mounted. I was going to mount the guard and the accused was on guard. The guard was to go on at 1930 hrs. The accused normally would carry a pistol on guard. I did not hear the accused say what happened. The only time I saw the weapon was when someone handed it to Capt Luxton. I have never examined the accused's pistol. The accused was wearing a pistol case on his belt and at the front of his body. The accused usually wore his pistol on his left side.

RP 83(B) complied with.

Third witness for prosecution: Major R B Eaton 5 FSD sworn:

I recognize the accused as a patient under my care. He is sufferin g from a through and through GSW wound of the left thigh. There were no powder burns. The wound is at the junction of the mid and lower part of the thigh, one wound on the inside and one wound on the outside. The wound on the outside was the larger of the two and could have been the exit wound. I operated on the accused but not on his initial admittance to hospital. The accused was treated in the normal manner when admitted then a pulsation mass was noticed on the inner side of the leg. There is no serious nerve damage. The accused should be held under observation for several months. I cannot say at this time if there will be a lowering in category.

No cross examination. RP 83 (B) complied with.

Fourth witness for prosecution: L58276 Rfn Montgomery J 6 Pl Sp Coy Regina Rif R sworn states:

I know and recognize the accused from my coy. I was in the billets on the night the accused was injured. I was sitting on a bed watching a card game. Cpl Clark, Doltzer another chap, and the accused were playing cards. I was sitting behind Cpl Clark. The cards were being dealt and I heard a shot as I was looking down toward my bed. I heard someone yell for a tourniquet.

No cross examination.

The Court: I cannot say from what direction the shot came from. I saw the accused later having a tourniquet applied. I did not hear any conversations in the presence of the accused, regarding his injuries. The accused's leg was bleeding.

RP 83(B) complied with.

OBJECTION TO LT COL J W G THOMPSON

The accused feels that Lt-Col J W G Thompson as a member of a standing court is inclined to judge negligent SIW cases in the light of wilful SIW cases and thus metes out harsher punishments.

2. The accused feels that as Lt-Col J W G Thompson has not served in the front lines in this war, he does not fully appreciate the conditions a man lives in, and he wishes therefor to be tried before a court composed of front line officers, viz RP 19B ss 5 note 3.

3. The accused feels that due to the serious nature of the charges the ADJA should be present in order to prevent any breaches of procedure by inexperienced defending and prosecuting officers.

4. The accused feels that as Lt-Col J W G Thompson lives at 11 FDS where the accused is a patient and as investigation by Provost personnel has been carried out whilst the accused was suffering from shock. Therefor he feels that Lt-Col J W G Thompson is bound to hear, know and be interested in the case beforehand and is not impartial.

As there have been no acquittals on any of these cases in 3 CID, the accused is firmly convinced that he is practically convicted before his trial commences, viz RP 25 note 8.

("D C Howat") Capt

OBJECTION TO CAPT K F GAREN

1. The accused feels that Capt K F Garen as a member of a standing court is inclined to judge negligent SIW cases in the light of wilful SIW cases and thus metes out harsher punishment.

2. The accused feels that as Capt K F Garen has not served in the front lines in this war, he does not fully appreciate the conditions a man lives in, and he wishes therefor to be tried before a court composed of front line officers, viz RP 19B ss 5 note 3.

3. The accused feels that due to the serious nature of the charges the ADJA should be present in order to prevent any breaches of procedure by inexperienced defending and prosecuting officers.

4. The accused feels that as Capt K F Garen lives at 11 FDS where the accused is a patient and as investigation by Provost personnel has been carried out whilst the accused was suffering from shock, therefor he feels that Capt K F Garen is bound to hear, know and be interested in the case beforehand and is not impartial.

5. As there have been no acquittals on any of these cases in 3 CID, the accused is firmly convinced that he is practically convicted before his trial commences, viz RP 25 note 8

("D C Howat") Capt

OBJECTION TO MAJOR M L TROY

1. The accused feels that Major M L Troy as a member of a standing court is inclined to judge negligent SIW cases in the light of wilful SIW cases and thus metes out harsher punishments.

2. The accused feels that as Major Troy has not served in the front lines in this war, he does not fully appreciate the conditions a man lives in, and he wishes therefor to be tried before a court composed of front line officers, viz RP 19B ss 5 note 3.

3. The accused feels that due to the serious nature of the charge the ADJA should be present in order to prevent any breaches of procedure by inexperienced defending and prosecuting officers.

4. The accused feels that as Major M L Troy lives at 11 FDS where the accused is a patient and as investigation by Provost personnel has been carried out whilst the accused was suffering from shock Therefor he feels that Major M L Troy is bound to hear, know and be interested in the case beforehand and is not impartial.

5. As there have been no acquittals on any of these cases in 3 CID, the accused is firmly convinced that he is practically convicted before his trial commences, viz RP 25 note 8

("D C Howat"/ Capt

RECEIVED AT CMHQ on the 10th APR 45

10 APR 1945 JAG Division C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CP.A.96 (1st Rev. of AFA3)

4/388

Convened by BRIG J. G. SPRAGGE Comd 7 Can Inf Bde dated 5 Feb 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
L.27912	Rfn	Thomas Clarence James	RYAN	Regina Rif.

PROCEEDINGS REVIEWED 10 Apr 45 K.G. Lieut Capt

FOR OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in (unit) [illegible] (country) Holland on (date(s)) 26 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See book of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 114 [illegible].)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (are) amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1345 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to [illegible] as interpreter? Ans [illegible]~~

~~The Interpreter is sworn.(1) Do you object to [illegible] as shorthand writer? Ans [illegible]~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans YES. (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT COL	J. G. THOMPSON MM ED	RCA.
Member	MAJ.	M. L. TROY ED	C.I.C.
Member	CAPT.	K. F. GAREN	C.A.C.
~~Judge Advocate~~			
Prosecutor	LT	J. H. RONEY C.I.C.	REGINA RIF.
Defending Offr	CAPT	D. C. HOWAT C.I.C.	REGINA RIF.

Questions by President: Is the Prosecutor a lawyer? Ans N.O. Is the Defending Offr a lawyer? Ans N.O. (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv. Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused L.27912 Rfn Ryan T.C.J. before arraignment make(s) (no) ~~not~~ plea [illegible] (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "D"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 85, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans.....(5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

FIELD GENERAL COURT-MARTIAL

Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L.27912	Rfn		Thomas Clarence James	RYAN	Regina Rif

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 5 Feb 45 endorsed by me, (~~the Convening Officer~~) (~~my predecessor in command~~) (or by me), "To be tried by Field General Court-Martial".

2. ~~X~~ ~~As a Convening Officer I am of opinion that each of the persons~~ ~~should be tried by a~~ ~~General Court-Martial, and that you are requested to duly constitute a~~ ~~for~~ ~~such~~ ~~etc.~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) fit Offr to be the Court, (b) a Fd Offr as President, for the reasons I have stated below.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt Col	J W G Thompson	RCA

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Maj	M L Troy	CIC
Capt	K E Garen	CAC

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	L A GIBSON	CIC

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Holland
(Country.)

Dat 5 Feb 45

(Signed personally. RP 105 fn 2.)

(J G Sprague)
Commanding 7 Canadian Infantry Brigade

Brig
Brigadier
(Rank.)

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

CHARGE SHEET

The accused, L.27912 Rfn Thomas Clarence James RYAN, 1st Bn The Regina Rifle Regiment (Attached 11 Cdn FDS), a soldier of the Canadian Army Overseas, while on Active Service,

is charged with

First Charge
Sec. 40
Army Act.

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he, in the field, on 13 Jan 45, at approximately 1900 hrs, so negligently handled a pistol as to cause it to be discharged and thereby injuring his left thigh and rendered himself unfit for service.

In the field
20 Jan 45

(J.B.Bundock) Major RCAMC
Offr Comd 11 Cdn FDS

To be tried by Field General Court Martial

5 Feb 45

(Convening Officer)

Ltr. 1

This is to certify that I have, this day examined

No. 27912 Rank. Rfmn Name. RYAN

and find him fit to undergo trial by

Field General Court Martial. — on a stretcher.

J. McD. Corstan Capt
Medical Officer

Date Feb 26/45
Time of signature.
1245 A.

Recorded Proceedings.

H.6. (1) Defence addresses court on objections to the President St. Col. J.W.G. Thompson M.M. E.D.

Address att.

Objections considered and disallowed, by Maj. M.L. Troy. & Capt. A.H. Green

(2) Defence addresses court on objections to the members. Capt. A.H. Green

Address att.

Objections considered and disallowed by. St. Col. J.W.G. Thompson & Maj. M.L. Troy.

(3) Defence addresses court on Objection to the member Maj. M.L. Troy. E.D.

Address att.

Objections considered and disallowed by. St Col J.W.G. Thompson & Capt. A.H. Green.

D 3.

First Witness for Prosecution

L 27522 C.S.M. Ward D. J. "Sp" Coy.
1 Bn. Regina Rif. R.

I know and recognize the accused of the "Sp" Coy. Regina Rif. On the night of 13 ~~Dec~~ 45 at appx 1900 hrs I was in the Sgt. Q. and C.S.M.'s Mess when I walked into the room and from information I received I proceeded to the accused's quarters. I saw the accused lying on a bed and being attended by a member of the RCAMC I inquired if the R.M.O. had been sent for and checked the time by my own watch it was then 1903 hrs. I posted sentry's on each door to make sure no one left the room, Capt Sinton the Coy OC entered at this time and took over the ~~in~~ investigation. I then lined up all present and Capt Sinton took their names A search was made for the weapon that the accused was shot with and the accused ~~platoon~~ sgt reached under the bed and produced a .38 S & W pistol. I ~~know~~ that the accused had been lying on forget the number of that pistol.

D3

The pistol was handed to Capt Sinton and Capt Sinton handed it to me, I smelt the pistol and I would say that it had been discharged very recently. Capt Sinton took the pistol into his custody. I made an inquiry and the accused was auth. to carry a pistol. The pistol I examined, that is the pistol in question, has a number and the number corresponded with the issue entry in the accused service book. I saw the pistol picked up by the platoon sgt and it was in such a position that in my opinion it could have been dropped there by the accused as anyone.

Cross Examined.

I am not a qualified ammn examiner. I would say it was only a matter of minutes from the time the pistol was fired and I smelt it to hand.

The Court.

On examination I found one expended and five live rounds in the cylinder. I did not examine the mechanics of the pistol. It was not light in the room but there was sufficient light to see.

D3

The sgt was not in the hut at the time I did not have conversation with the accused. I do not know of any conversation that took place in the presence of the accused regarding the facts of his injury. The accused was sup as a D.R.

RP 52 (a) complied with

Second Witness for Prosecution

L 27729 Cpl Clark A. 3 Sec 4 Platoon "G" Coy sworn states.

I know and recognize the accused Pte Coy. I was playing cards with Rfn Dotzler, Rfn Grant & the accused in our billets, in a large room. We were playing on a bed spring and the game was hearts. It was in the evening, after supper and I was score keeper and as I was recording the score I heard a shot, I looked up and noticed the accused had been shot and the accused said "get a tourniquet," and "Get a shell dressing", a crowd gathered around and I was pushed into the back ground. Capt Sutton arrived. The accused was still in the game at the time of the shot. I did not see the accused with a pistol in his hands.

D2.

8 It was just a matter of minutes from the last time I actually saw the accused and when I heard the shot. I did not hear at any time the accused say, "he was going to clean his pistol."

No further Examination.

The Court.

The accused was sitting opposite me during the game. The accused was sitting on a bench. Rfn Court was sitting either on the same bench or another ~~bench~~ bench. The report ~~of~~ sounded ~~the~~ very close. To my knowledge Dotzler did not fire the shot, I think Court was dealing the cards, I was recording the score. The accused was just a the bed that we had played cards on. It was approximately A guard was to be mounted. I was going to mount the guard and the accused was on guard. The guard was to go on at 1900 hrs. The accused normally would carry a pistol on guard. I did not hear the accused say what happened. The only time I saw the weapon was when someone handed it to Capt Justa. I have never examined the accused pistol. The accused was wearing a pistol case on his belt and at the front of his body. The accused usually wore his pistol on his left side.

RP 83"B" Complied with

D 3

Next Witness for Prosecution.

Major R. B. Eaton 5 7 S.V. sworn states.

I recognize the accused as a patient under my care. He is suffering from a through and through gunshot wound of the left thigh. There were no powder burns. The wound is at the junction of the mid and lower part of the thigh. There are wound on the inside and one wound on the outside The wound on the outside was the longer of the two and could have been the exit wound. I operated on the accused but not on his initial admittance to hospital. The accused was treated in the normal manner when admitted then a paralysis was noticed on the inner side of the leg. There is no serious nerve damage. The accused should be held under observation for several months. I cannot say at this time if there will be a lowering in category.

No cross examination

R.P. 83 "B" complied with.

26 Feb 45.

PRESIDENT

D3.

Fourth Witness for Prosecution

L 53276 Pte Montgomery 6 Pl. Sy Coy
Regina Rifle Regt. Sworn States.

I know and recognize the accused from my coy. I was on the toilets on the right the accused was injured. I was sitting on a bed watching a card game. Cpl Clark Dalton another chap, and the accused were playing cards. I was sitting behind Cpl Clark. The cards were being dealt and I heard a shot as I was looking down toward my bed, I heard someone yell for a tourniquet.

No Cross Examination

The Court

I can not say from what direction the shot came from. I saw the accused later having a tourniquet applied. I did not hear any conversations in the presence of the accused. regarding his injuries. The accuseds leg was bleeding.

RP 83 (B) complied with.

26 Feb 45

PRESIDENT.

A65

Objection to Lt-col J.M.S. Thompson

1. The accused feels that Lt-col J.M.S. Thompson as a member of a standing court is inclined to judge negligent S.I.W. cases in the light of wilful S.I.W. cases and thus metes out harsher punishments.

2. The accused feels that as Lt-col J.M.S. Thompson has not served in the front lines in this war, he does not fully appreciate the conditions a man lives in, and he wishes therefor to be tried before a court composed of front line officers.
viz KR 19B ss 5 note 3

3. The accused feels that due to the serious nature of the charges the ADJA should be present in order to prevent any breaches of procedure but nothing concerning defending & prosecuting officers.

4. The accused feels that as Lt-col J.M.S. Thompson lives at HFDS where the accused is a patient and as investigation by Provost personnel has been carried out while the accused was suffering from shock. Therefor he feels that Lt-col J.M.S. Thompson is biased, known and he interested in the case beforehand and is not impartial

5. As there have been no acquittals on any of these cases in 3 C I D, the accused is firmly convinced that he is practically convicted before his trial commences
viz KR 25 note 8

Witness Capt

A6.21

Objection to Capt K F Larsen

1. The accused feels that Capt K F Larsen as a member of the standing court is inclined to judge negligent S.I.W. cases in the light of original S.I.W. cases and thus metes out harsher punishment

2. The accused feels that as Capt K F Larsen has not served in the front lines in this war he has not fully appreciate the conditions a man has to endure and therefore should be tried before a court composed of front line officers.

viz R.P. 19B as 3 note 3

3. The accused feels that due to the serious nature of the charges the ADSA should be present in order to prevent any breaches of procedure by inexperienced defending and prosecuting officers.

4. The accused feels that as Capt K F Larsen lives at HFDS where the accused is a patient and an investigation by Provost personnel has been carried out whilst the accused was suffering from shock. Therefore he feels that Capt K F Larsen is bound to hear, know and be interested in the case beforehand and is not impartial.

5. As there have been no acquittals on any of these cases in 3 C I D, the accused is firmly convinced that he is practically convicted before his trial commences.

viz R.P. 25 note 8

Defence Capt.

A63

Objection to Major M. L. Story

1. The accused feels that Maj. M. L. Story as a member of the standing court is related to judge negligent S.I.W. cases in the light of multiple S.I.W. convictions this meets out harsher punishments

2. The accused feels that as Major Story has not served in the front-lines in this war he does not fully appreciate the conditions at present existing and he might therefore be prejudiced before a court composed of front line officers. viz. K.R. 19B as 5 note 3

3. The accused feels that due to the serious nature of the charges the A.D.J.A should be present in order to prevent any breaches of procedure by not commencing defending & prosecuting officers

4. The accused feels that as Major M. L. Story knows at H.D.S. where the accused is a patient and an investigation by Provost personnel has been carried out whilst the accused was suffering from shock. Therefore he feels that Major M. L. Story is bound to have known and be interested in the case dependant and is not impartial.

5. As there have been no acquittals on any of these cases in 3 C.I.D. the accused is firmly convinced that he is practically convicted before his trial commences viz. K.R. 25 note 8.

A.D.J.A. Capt.

SUMMARY OF EVIDENCE

In the case of L.27912 Rfn RYAN, T.C.J., No. 4 pl "Sp" Coy., 1st Bn The Regina Rifle Regiment, Canadian Army Overseas.

By direction of the Commanding Officer the evidence is taken on oath.

First Witness

L.27522 A/CSM WOOD, I.J. "Sp" Coy, 1st Bn The Regina Rifle Regiment having been duly sworn, states:

" I am L.27522 A/CSM Wood, I.J., CSM of Sp Coy 1st Bn The Regina Rifle Regiment. On the night of the 13th of Jan 45 I was in the sergeants quarters talking to the sergeants of the coy. Between 1910 hrs and 1915 hrs L.27478 CQMS Holt, T. came in and said that L.27912 Rfn Ryan, T.C.J. had been shot. I immediately proceeded to the mens' quarters. L.27912 Rfn Ryan, T.C.J. was lying on a bed. He was being attended to by an O.R. member of the RCAMC. I immediately checked to see if the unit Medical Officer had been sent for. On being informed that he had I inquired as to what had happened. At this point Capt E.C.Luxton came in and took charge. We posted a sentry at each door to make sure no one got out and Capt E.C.Luxton and I took the name of every man in the room. Having completed this, we started to search for the weapon. A Smith and Wesson .38 calibre pistol was produced from under the corner of the bed by L.27742 Sjt Smith, E.A. who stated "Here's Ryan's pistol". I immediately smelt this weapon to see if it had been discharged and passed it to Capt E.C.Luxton. The weapon had been recently discharged. There was one discharged round in the chamber and five live rounds. Capt E.C. Luxton took this pistol into his custody. I checked to see if L.27912 Rfn Ryan, T.C.J. was in proper possession of this weapon and I was informed by his platoon sjt L.27742 Sjt Smith, E.A. that the issue was authorised and that it had been issued to L.27912 Rfn Ryan, T.C.J. at Canadian Base Reinforcement Group as part of despatch rider equipment. I submit Smith and Wesson pistol No. 923790, handed to me by L.27742 Sjt Smith, E.A. as Exhibit "A".

I have checked L.27912 Rfn Ryan's Part III paybook and find that he was issued with a pistol No.923790 (according to an entry on page 8) I submit Part III paybook as Exhibit "B".

The accused declines to cross-examine this witness.

The accused is cross-examined by the officer taking the summary

Q. How is L.27912 Rfn Ryan, T.C.J. employed in Sp Coy.
A. He is a despatch rider in No. 4 platoon.

Q. Is it normal for despatch riders in your coy to carry pistols.
A. Yes.

(I.J.Wood)

Second Witness

Major R.B.Eaton, 5 Cdn FSU, having been duly sworn, states:

" I am Major R.B.Eaton, OC 5 Cdn FSU att to 11 FDS in surgery connected with SIW.

L.27912 Rfn Ryan, T.C.J., 1st Bn The Regina Rifle Regiment was admitted to 6 Cdn C.C.S at approx 2300 hrs 13 Jan 45 with a three hour perforating wound of the left thigh. He was moderately shocked.

Both entry and exit wounds were small, circular in outline and oozing blood. No powder stains evident. There was considerable swelling of the thigh, pulsation of the arteries in the foot could not be felt, however, the foot was warm and all movements and sensation present. No bony injury. It was thought that he might have some vascular injury which required observation and conservation treatment. He will require medical care and observation for a period of two to three months because of this vascular injury. I am unable to finally assess this case without further follow up, but in my opinion no permanent disability will result.

The accused declines to cross-examine this witness.
Cross examined by the officer taking the summary.

Q. Did Rfn Ryan state how he received his injury ?
A. No.

Q. Where did the bullet enter Rfn Ryan's thigh?
A. It was impossible for me to detect which was the entry and which was the exit wound. It was a through and through wound and gave the appearance of being produced by a small arms missile.

Q. Where exactly were the two holes?
A. One on the inner side of thigh 8½ inches above the knee cap. One on outer side of thigh 8½ inches above the knee cap.

R.B. Eaton

(R.B.Eaton) Major

Third Witness

L.27729 A/Cpl CLARK, A., 3 Sec., 4 platoon "Sp Coy, sworn, states:

" I am L.27729 A/Cpl CLARK, A., 3 Sec. 4 platoon Sp Coy., 1st Bn The Regina Rifle Regiment. On 13 Jan 45 at approximately 1900 hrs, four of us,K.76375 Rfn Court, F.D., L.27912 Rfn Ryan, T.E.J. and L.102783 Rfn Dotzler, C.J. were sitting around a bed playing a card game called "Hearts". I had been keeping score and we had just finished a hand. Rfn Court was starting to deal a new hand and I was marking the score down. A few minutes before this I had mentioned to the group I was playing cards with that a two man guard would have to be mounted from 1900 hrs to 2100 hrs. As I was marking the score down I heard a shot fired and Rfn Ryan said, "Get a tourniquet" and then he said "Get a shell dressing".

Rfn Ryan was holding his left thigh in both hands and there was blood around his hands. With the number of people around, I was forced to the background. Capt E.C.Luxton took my name saying no one was to leave the room until further orders.

Cross examined by the accused.

Q. During the previous hand do you remember me saying anything to the effect that I was going to quit the game as it was getting dull and I was getting tired of the game?
A. I remember you saying sometime during the game that if it didn't liven up you were going to quit but I can't remember what hand we were playing at the time.

Cross examined by officer taking summary.

Q. Did you see anyone fire the shot or see anything that would indicate where the shot was fired from?
A. No, sir.

Q. Was there any money involved in the game?
A. No, sir, there was no money in the game.

Q. Where were you sitting in relation to Rfn Ryan.
A. I was facing him.

Q. Did you see Rfn Ryan with any kind of weapon in his hand at any time during the game?
A. No, sir.

Q. How much of Rfn Ryan's body was visible to you across the bed that you were playing on?
A. I could see down about half his thighs.

Q. Who was due to go on guard at 1900 hrs?
A. Two men from No.3 Section, it being No.3 Sections turn to supply the guard. It was mine and Rfn Ryan's turn to go on guard next.

Q. What kind of a guard was it?
A. A vehicle guard, on the vehicle park

A. Clark

(A.Clark)

Fourth Witness

L.53276 Rfn MONTGOMERY, J., 6 pl., Sp Coy., 1st Bn The Regina Rifle Regiment, having been duly sworn, states:

" I am L.53276 Rfn Montgomery, J., 6 pl, Sp Coy., 1st Bn The Regina Rifle Regiment. At approx 1900 hrs 13 Jan 45 I was watching a card game in Sp Coy quarters. I was sitting behind the man who was keeping the score. I heard a shot fired and I heard someone say "Get a tourniquet".

Cross examined by the accused:

Q. During the last few hands did you, by any chance, hear me say that the game was ~~dxxx~~ getting dull, and I was tired of it and I was about to quit?

A. No, I was paying no particular attention to the conversation at the table?

Cross examined by officer taking summary:

Q. Did you see anyone handling a weapon just before the shot was fired?

A. No.

Q. Did you see anything that would indicate approx where the shot was fired from or who fired the shot?

A. No, I was looking down at the opposite end of the room when the shot was fired.

Rfn J. Montgomery

(J Montgomery)

Fifth witness

L.106980 Rfn PATRICK, F., Scout pl, BnHq, 1st Bn The Regina Rifle Regiment, having been duly sworn, states:

" I am L.106980 Rfn Patrick, F., Scout pl, BnHq, 1st Bn The Regina Rifle Regiment.

On night of 13 Jan 45 at approx 1900 hrs I was in Sp Coy quarters, having gone there with Rfn Helgerson who wished to borrow a housewife. We decided to stay a few minutes and watch a card game. I sat on the same bench that Rfn Ryan was sitting on, on his left side about two feet from him. I heard a bang and felt a sting in my leg, I was looking away from the players and the card game at that moment. I heard Rfn Ryan call for someone to put a tourniquet on and saw blood around him. I then looked to see how badly I was hurt. I had only a slight graze on the calf of my right leg. There were several helping put ~~xx~~ a tourniquet on Ryan. Someone from the RAP came down to assist.

Cross examined by the accused:

Q. Did you, within a second or so before the shot, feel the bench give a jolt?

A. I could not say for sure, it could have jolted and I paid no attention to it. I don't remember.

Q. Within a hand or two before the shot did you happen to hear me make a statement to the effect that the game was getting dead and I was getting tired of it?, and I was going to quit?

A. I heard someone say that they would have to bust the game up to go on guard but who, I couldn't say. I don't remember hearing you say anything about the game getting dead and you were going to quit.

Cross examined by the officer taking summary

Q. Did you observe anything that would give you any idea who fired the shot?

A. No.

Q. Did you see anyone at the game handling a weapon?

A. No

J F Patrick

(J.F.Patrick)

Sixth Witness

K.76375 Rfn COURT, F D, 3 Sec., 4 pl, Sp Coy, 1st Bn The Regina Rifle Regiment, having been duly sworn, states:

" I am K.76375 Rfn Court, F.D. 3 Sec., 4 pl., Sp Coy., 1st Bn The Regina Rifle Regiment. At approx 1900 hrs 13 Jan 45 Cpl Clark, Rfn Ryan, Rfn Dotzler and myself were playing a game of hearts in our quarters. We had just finished one game and I had dealt another hand. I was straightening out the cards in my hand when I heard a shot. I looked around and Ryan was holding his left thigh and he said "Get a tourniquet, quick, I'm shot" . I had a shell dressing and I pulled it out and gave it to someone who was trying to stop the bleeding. I dont know who it was. The medical orderlies came and went to work on Ryan, I was sitting to the right of Rfn Ryan, approx 3 to 4 feet from him across the end of the bed that we were playing cards on, I saw no one with a weapon and had no idea who fired the shot.

Cross examined by the accused:

Q. Within the last hand or two do you remember me making a statement that the game was dead and I was going to quit?

A. I believe you did, I couldn't say definitely.

F.D. Court

(F.D.Court)

Seventh Witness

L.102783 Rfn DOTZLER, C.J., 3 Sec, 4 pl, Sp Coy., 1st Bn The Regina Rifle Regiment, having been duly sworn, states:

" I am L.102783 Rfn Dotzler, C J, 3 Sec, 4 pl, Sp Coy., 1st Bn The Regina Rifle Regiment. At approx 1900 hrs on 13 Jan 45 Rfn Ryan, Rfn Court, Cpl Clark and I were playing "Hearts" around a bed. There were a few other people sitting around near where we were playing.

Cpl Clark mentioned something to Ryan about it being about time to go on guard. Court had just dealt the cards and Cpl Clark was marking down the score. There was a Maple Leaf newspaper sitting in front of me, I was glancing at it while playing cards. I had just passed three cards to Cpl Clark and asked Ryan to pass me three. He said "Just a minute". All at once I heard a shot and Ryan fell back over the bench that he had been sitting on, holding his left leg, which was bleeding badly. He said "Get a tourniquet, quick" . I think I saw a revolver near him but couldn't be certain, with all the confusion and blood. I saw nothing that would indicate who fired the shot. Someone went for the medical officer. Rfn Ryan was sitting on my immediate right approx 3 feet from me.

Cross examined by the accused:

Q. During the period of the last couple of hands did you hear or remember me make a statement about the game getting dead and I was going to quit?

A. I can't really say, its quite a while back, you may have said it.

Q. Are you sure it was right after the shot or a little while after the shot that you saw me leaning back?

A. I believe it was right after the shot, he was leaning back holding his leg and said "Get a tourniquet".

C. J. Dotzler.

(Dotzler C J)

The accused was cautioned as follows:

Q. Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be given in evidence.

A. I want to make a statement.

Q. On oath or not on oath?
A. On oath.

The accused, having been duly sworn, states:

" At approx 1900 hrs 13 Jan 45 I was playing a game of cards called "Hearts" with three others, Cpl Clark, Rfn Dotzler and Rfn Court. We were seated around a bed and had been playing for some time and the game was beginning to get dead. I was getting tired of it and it was nearly time to go on guard so I decided to stop playing and clean my pistol before I went out on gurad. I had just pulled my pistol out of my holster which I was wearing on the left hand side of my belt. I had no sooner got it out than there was a jolt on the bench which took me by surprise as I was sitting on the end of it. It caused me to lose my balance and I instinctively reached forward and grabbed to save myself. The pistol was in my right hand and in reaching forward I must have s squeezed it, causing it to go off. I felt a shock to my left thigh and saw blood spurt from it. I don't know what I did with the pistol but I ~~xxxxxxxxxxxxx~~ know I grabbed my leg about the wound. After that things happened too fast for me to remember right.

Tom C J Ryan.

(Tom C Ryan)

The accused does not call any witnesses.

" I certify that the foregoing summary of evidence, consisting of five pages was taken down by me in the presence of the accused and that RP 4(c)(d)(e) and (f) have been complied with

E.A. Fowle

In the field
20 Jan 45.

(E.A.Fowle) Lt.
Regina Rif
Officer taking summary

LIST OF WITNESSES

Prosecution

L.27522 A/CSM WOOD, I.J. - 1st Bn The Regina Rifle Regiment
Canadian Army Overseas

Major R.B.EATON - 5 Cdn FSU, att 11 Cdn FDS,
Canadian Army Overseas.

L.27729 A/Cpl CLARK, A - 1st Bn The Regina Rifle Regiment
Canadian Army Overseas.

L.53276 Rfn MONTGOMERY, J. - 1st Bn The Regina Rifle Regiment
Canadian Army Overseas.

L.105980 Rfn PATRICK, F -6 Canadian Casualty Clearing Station,
Canadian Army Overseas.

K.76775 Rfn COURT, F.D. - 1st Bn The Regina Rifle Regiment
Canadian Army Overseas.

L.102783 Rfn DOTZLER, [redacted] Rifle Regiment
Canadian Army Overseas.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans N O .....(1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (~~an~~) (no) opening address.(1)

(1. RP 39(B), 60(A)(B), 90, 92(C)(D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D)(E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the FIRST charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is ~~dismissed on the charge(s), and~~ allowed on the FIRST charge(s), and that, ~~accordingly, the trial will proceed on the former, but~~ the accused is (~~are~~) found Not Guilty on the ~~latter~~ charge(s).(4)

(1. Delete remainder of this para. if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans ..... Do you intend to call witnesses on your behalf?

Ans ..... Are they witnesses as to character only? Ans .....

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3)(6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans .....

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused because (i) they purport to be signed in the manner required by AA 163(1)(g)(h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)

(1. MFR 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 552. If above documents not produced, see RP 46 fn 1, para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans .....(2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. When several accused tried separately see RP 71(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its annexe, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 108, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: L 27912 Rfn Ryan T C J.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 5 EC (4)	NOT GUILTY	NOT GUILTY	Noted Nkhudron Brig
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753; and in loss of kit see RP 44 fn 6.)

~~At present under sentence for ..... beginning on (date) ..... (1).~~
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

~~Time in confinement awaiting present trial, a total of ..... days, of which ..... days were spent in hospital.~~ (1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

~~Sentence Awarded by the Court.~~

(Sgd) ..... 26 Jul 45 (Sgd) .....
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) .....

Date .....

Commanding .....
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

MMM-11

PTE RYAN T.P.M.

RECORDED AT CMHQ IN AB 160 [illegible]

FIELD GENERAL COURT-MARTIAL

CF AMS 1 (in lieu of AFA3) AG P 30 B 1608 (2064)

Convened by Order of Brig WJ McGill Comd 5 Cdn Inf Bde dated 16 May 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D81862	Pte	Pte	TERRENCE Patrick Michael	Ryan	R HC

PROCEEDINGS RECEIVED 2 June 44 Date 31 May 44 [illegible] J.A. Can. Sec. G.H.Q. 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) U.K. on (date(s)) 27 May 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 7/26

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and (Charge Sheet) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 & 22. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court(s). At 1430 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. ~~2. AA 44(3), RP 50 fn 1.~~ For effect see KR Can 561(c). Delete if not applicable.)

A5. ~~President to accused: Do you object to~~ no shorthand writer ? Ans ~~The Interpreter is sworn.(1) Do you object to~~ ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Mayor	CCA NAIM	Coly Highrs
Member	Capt	GG Chadson MBE	R de Mais
Member	Lieut	JK Neil	RHC
Judge-Advocate		NEGH. Buch	RHC
Prosecutor	Lieut	GS. Corde	RHC.
Defending Offr	Lieut		

Questions by President: Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DJAG)

A8. The accused D81862 Pte Ryan T.F. before arraignment make(s) (no) (1) plea.

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 24, 35(A), 113), or in bar of trial (RP 26), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2 and proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A)).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 55(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 105 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. RP 35 fn 3. 2. MML p 54 para 47.)

President to accused : Do you wish to make a statement in reference to the charge(s)(1). If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

Ans ~~No~~ (5)

(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so advised accordingly. The accused is (are) correct, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~

(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge,s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making the appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence yourself or not, and you may make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans ..... Do you intend to call witnesses on your behalf ?

Ans ..... Are they witnesses as to character only ? Ans .....

(1. RP ~~105~~ 115. 2. RP 40(A), see B0(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(2) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans ~~No~~

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true ~~copy~~ (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)

(1. MFB 355 or AFB 296. 2. MFM p. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans I WISH my defending officer to make a statement (2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes? Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. When several accused tried separately see RP 120. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D81862 Pte Ryan TPM R.H.C.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st CHARGE	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of list see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (date) CAN (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 3 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of 180 days

(Sgd) ..... Judge-Advocate, if any. 17 May 44 Date awarded. (Sgd) CAN Major President. (RP 45, 90.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ (1)

(1. AA 57A. Delete if not used.)

Date 17 May 44 (Sgd) W Penfold Brig Commanding 1 Can Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D81862 Pte Ryan TPM	22 May 44	Campbell Stuart Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CHARGE SHEET

The accused D-81862 Private Terrence Patrick Michael Ryan, 1st Bn The Black Watch (RHR) of Canada, a soldier of the Canadian Army Overseas, on Active service, is charged with:

FIRST CHARGE Absenting himself without leave,

Sec 15 (1) Army Act

in that he,

in the field, on 8 May 44, absented himself without leave from 1200 hrs 8 May 44 to 1530 hrs 14 May 44. (Absent 6 days 3 hrs and 30 minutes).

S.S.T Cantlie Lt.-Col.
Officer Commanding,
1st Bn The Black Watch
(RHR) of Canada.

To be tried by
F.G.C.M.
[illegible] Inf
Comd 5th Can Inf Bde
16 May 44

Case Dismissed

FIELD GENERAL COURT-MARTIAL

CFA 95 (In lieu of AFA 3)
46/PAM/1697 (2003)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-81862	Pte	Terrance Patrick Michael	RYAN	RHC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person[s] named above as the accused, being subject to military law, has (~~have~~) committed the offence[s] set forth in the Charge Sheet[s] attached and on (*date*) 16 May 44 endorsed by me, (~~[illegible]~~) "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence[s] should be tried by an ordinary General Court-Martial; ~~[illegible]~~

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person[s], and to consist of the Offrs appointed or detailed hereunder.

4. ~~[illegible]~~

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	C C A Nixon	Calg Highrs

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	G.S. # Charron MBE.	R de Mais
Lieut.	J K Neil	RHC

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Captain	L S Brown (SPO)	5 Cdn Inf Bde HQ

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in U K
(Country.)

Date 16 May 44

(Signed personally. RP 105 fn 3.)

Brigadier
(Rank.)

Commanding 5 Canadian Infantry Brigade

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

MEDICAL OFFICER'S CERTIFICATE
A.M. (Con) Para 527

I certify that I have this morning examined No. D81862

Pte RYAN T of 1 B.H.G. and in my opinion he is

fit/[redacted] to undergo trial by Court-Martial.

Station In THE FIELD

Date 17 May 1944.

Medical Officer

Statement of Event - Lt. Bird in Defence of
D81962 Pte. Lawrence Edward Michael Lyden
for the Black Watch R.H.R. of Canada C.A.O.
I am the Lyden Victoria Cross for gallantry the
Medal is a fine object and possesses features
which I feel sure will prove valuable when
the Battalion goes into action
I should be very sorry to lose the Medal

F.S. Cowhe Lt

O.K. H.Q. 1st Div

Statement of D-81862 Pte. Ryan, T.P.M.

"I wish a defending officer".

"I desire the services of Lieut. G.S. Cooke, if he is available".

Private
D-81862,
1st Bn The Black Watch
(RHR) of Canada.

Lieut.
Officer detailed to
take summary.

In the Field
15 May 44.

Exhibit "A"

SUMMARY OF EVIDENCE

Summary of Evidence in the case of Number D-81862 Private Terrence Patrick Michael Ryan, 1st Bn The Black Watch (RHR) of Canada, a soldier of the Canadian Army Overseas, On active Service: charged under AA 15 (1) AWL 6 days 3 hrs 30 mins.

The accused is informed of his rights.

The C.O. directs that the evidence be taken on oath.

FIRST WITNESS for the Prosecution: D-82031 Cpl. Parsons, L., 1st Bn the Black Watch (RHR) of Canada, sworn states:

"On the 8 May 44 my pl went into a nearby town on bath parade. Some of the men were allowed to go for haircuts, Pte. Ryan was one of them. At 1200 hrs when we were about to return back to camp, I called the roll and Pte. Ryan was absent."

Q. Was Pte. Ryan told to report back?

A. Yes, as soon as they had had their haircuts, by Capt. Louson.

The accused declines to cross-examine.

(Sgd) "D-82031 Cpl. Parsons, L."

SECOND WITNESS for the Prosecution: D-71629 Sgt. Gulline, R.L.F., 1st Bn The Black Watch (RHR) of Canada, sworn states:

"Pte. Ryan has not been on parade with No.8 Pl since 1330 hrs 8 May 44. He reported back to me at 1535 hrs 14 May 44.

The accused declines to cross-examine.

(Sgd) "D-71629 Sgt. Gulline, R.L.F."

THIRD WITNESS for the prosecution: D-82764 Cpl. Smith, W., 1st Bn the Black Watch (RHR) of Canada, sworn states:

"I was Bn Guard Comd on 14 May 44. At 1530 hrs Pte. Ryan, under his own will, sober and in good order, reported to me. I told him to report to his company. At 1630 hrs he was returned to me to be put under close arrest."

The accused declines to cross-examine.

(Sgd) "D-82764 Cpl. Smith, W."

FOURTH WITNESS for the Prosecution: Capt. I.H. Louson, 1st Bn The Black Watch (RHR) of Canada, sworn states:

"In the morning of 8 May 44 I was in charge of the coy bath parade. Before proceeding from camp I gave orders that we would return from the bath parade at 1200 hrs, and that all those getting haircuts would have that done immediately and return to the baths to wait for the tpt to move off. I further ordered that there would be no lingering in the town by any coy personnel either on bath or haircut parade. At 1200 hrs when the coy was ready to move off, Cpl. Parsons reported to me that Pte. Ryan was missing."

The accused declines to cross-examine.

(Sgd) "Capt. I.H. Louson"

The accused, having been duly cautioned in accordance with R.P. 4 (e), says:

"I do not wish to say anything now".

The accused does not wish to call witnesses in his defence at this point.

CERTIFIED THAT R.P. 4 complied with.

"In the Field"
15 May 44.

Lieut.
Officer detailed to
take summary.

No. 3.81862 Name Terrance Patrick Michael RYAN Unit, Battery or Company — Corps C.I.C Date of enlistment 28 Nov 39 GC Badges — Service or Proficiency Pay — MFM 6 (AFB 122) 40/P&S/136 (3438)

Company Conduct Sheet: Date of last entry in None — No. and date of last drunk None — Period not reckoning towards freedom from extra fine N/A — Sheet No 1 — Signature OC Company, etc C. Patch Capt. — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	16/1/40	Pte		AWL from 2130 hrs 15/1/40 to 2000 hrs 16/1/40.	Sgt. C.J. Keegan	7 days CB.	19/1/40	H.M. Bowlays	3 days pay.
"	6/3/40	Pte		AWL from 2300 hrs to 0115 hrs 19.3.40.	Pte G. Hawkins COS	2 days CB	19.3.40	E.C. Rawlings	
"	21/3/40	Pte		AWL from 0200 hrs to 1945 hrs 24.3.40	W/Cpl Bishop	4 days CB	24.3.40	E.C. Rawlings	1 days CB
"	26.3.40	Pte		When on active service AWL from 2200 hrs 16/4/40 to 0235 hrs 22/4/40 AA Sec 156)	D.81274 Cpl Mayfield W. D.81232 Cpl Buick, J.	14 days CB	23.4.40	Kg. Blackadder Capt	7 days pay
"	26.4.40	Pte		When on active service AWL from 1600 hrs 26/4/40 to 2236 hrs 27/4/40 & release arrest from 2236 hrs 27/4/40 to 1400 hrs 30.4.40	Pte Smith J. Sgt Fowler K.J. Cpl McKee W. Cpl Evans E.K.	120 hrs detention	30.4.40	K.G. Blackadder Lt-Col	9 days pay.

Ex h C. ORANGE Wings.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	29.7.40	Pte		Sick in Active Service. Conduct to the prejudice of good order and military discipline in that he left the Armoury without permission after roll call at 1430 hrs.	W Heather Sgt	Admonished Forfeits 1 days pay	30.7.40	Capt H Eadie Regt	1 days pay.
Field	14.9.40	Pte		Sick in Active Service AWL from 1900 hrs 14.9.40 to 2200 hrs 14.9.40 Sec 15 A.A.(1)					
				Sick in Active Service. Conduct to the prejudice of good order and military discipline in that he used abusive language to an NCO. Sec 40 AA	[illegible] Cpl Paterson, R [illegible] Gardner, D	3 days CB	16.9.40	Capt Regt	
Field	22.9.40	Pte		W.O. & A.S. Conduct to the prejudice of good order and military discipline, in that he ~~neglected to comply with an order from an NCO~~ in that he failed to work hours Sec 40 AA	Officials C Qrs Young JP	5 days CB	28.10.40	E Hastings Capt	

No [illegible] Name RYAN, T.P.M. Sqn, Battery or Company — Corps C.I.C. — Date of enlistment 28.11.39 — OC Badges — Service or Proficiency Pay — MFM 6 (AFB 177) 40/P&S/136 (2438)

Company Conduct Sheet Date of last entry in 14.8.40 — No and date of last drunk N/A — Period not reckoning towards freedom from extra fine N/A — Sheet No 2 — Signature OC Company, etc S.S. Carthie Maj — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witness	Punishment awarded	Date of award or of order cancelling with trial	By whom awarded	Remarks
Field	22.9.40	Pte		D.O.A.S. Conduct to the prejudice of good order and military discipline, in that he was eating while on guard. Dec 40 AA.	D/S 1000 RSM Norman P	7 days C.B.	24.9.40	S.S. Carthie Maj	
Field	25.10.40	Pte		D.O.A.S. Conduct to the prejudice of good order and military discipline, in that he, neglected to comply with an order from an N.C.O. in that he, failed to [illegible] floors Sec 40 AA	D/S 1041 C.S.M. Young. J.F.	5 days C.B.	28.10.40	S.S. Carthie Capt	

(P10)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1.11.40	Pte		① WOAS While a defaulter breaking out of Barracks without permission AA Sec 10(b) ② WOAS AWL from 1400 hrs 1.11.40 to 2130 hrs 3.11.40. Sec 15(1) AA.	DS1101 Cpl Saddale JS	14 days CB	4.11.40	Lt Col Hobson Maj	Inf fwb 3 days pay fm date
Field	5.11.40	Pte		WOAS Conduct to the prejudice of good order and subversive discipline in that he, when properly dressed on parade. See 40 AA	DS1106 Cpl Parkinson R	7 days CB	5.11.40	S/L Hobson Maj	
Field	30.12.40	Pte		WOAS AWL from 2359 hrs 30 Dec 40 to 1430 hrs 4 Jan 41. See 15 AA(1)	DS1056 ASM Tennant E DS1192 L/Sgt Collinson WTA	10 days detention & 7 days CB	6.1.41	Lt Col Hobson Maj	Inf fwb 5 days pay By DID 1400 hrs 10 days pay 14 days (1) 16 total 15 days pay

No [redacted] Name RYAN, T.P.M. | Sqn, Battery or Company | Corps C I C | Date of enlistment 25.11.39 | OC Badges | Service or Proficiency Pay N/A | MFM 6 (AFB 122) 40/PAS/136 (3438)

Company Conduct Sheet Date of last entry in 8.11.40 | No and date of last drunk | Period not reckoning towards freedom from extra fine N/A | Sheet No 3 | Signature OC Company, etc J. S. Coulter Maj. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	31.1.41	Pte		W.O.A.A.W.L. from 2359 hrs 31.1.41 to 1600 hrs 3.2.41 AASC/136(1)	Cpl Downey J.L.	14 days C.B. with 2 days stoppage of pay	4.2.41	A.P. Griffin	2 days pay for absence AFB 1417
Field	12.2.41	Pte		W.A.A.W.L. from 2359 hrs 13.2.41 to 1555 hrs 26.2.41 (A.W.O.L. 13 days 15 hrs 56 mins)	Sgt Mackie Eubank Cpl Swallow T. Gd Comd	28 days detention & proceed beginning of usual to on exp AFB K7-1-6	1 mar 41	A.H. Blackadder Lt-Col.	Forfeit 14 days pay in advance AFB 1417 (viii) 28 days old pay AFB 1417 (viii) forfeit 2 days pay AFB 1417 (viii) Total forfeiture 44 days pay.

(PTO

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	31.10 41	Pte		WOAS Disobeying a lawful command given by his superior offr. Contrary to Sec 9(2) WOAS An act to the prejudice of good ord and mil disc in that he was found in possession of 11 spoons the property of Violet Tea Rooms at 0100 hrs 1 Nov 40 AA Sec 40	G-7190 Sgt Mitchell M-37252 Cpl Sanaz B-4048 Cpl Williams 1761243 Sgt Willoughby J	7 days CB & forfeiture of 28 days ord pay	19.11.41	Lt Col Paddy Rt Co	Forfeits 28 days pay by 10/1743(a)
Field	2.7.42	Pte		(WOAS - AWL in that he, was absent from 2330 hrs 1.7.42 until 1500 hrs 2.7.42 (Absent 15 hours) AA Sec 15(c) WOAS - AWL in that he, was absent from 2330 hrs 2.7.42 until 0530 hrs 3.7.42 (Absent 6 hrs) AA Sec 15(1)	D52708 Cpl Darby Cpl Anderson R Anderson Gnr R D52645 Cpl Anderson R	5 days CB & forfeiture 5 days pay	9.7.42	35 Coy Lt Col	Forfeits 2 days pay by Field w/trial Total forfeiture 7 days pay.

MFM 6
(AFB 122)
40/P&S/136 (3438)

No. DS1562 Name RYAN T.P.M. Sqn. Battery or Company — Corps C.I.C. Date of enlistment 28.10.39 OC Badges — Service or Proficiency Pay N/A

Company Conduct Sheet Date of last entry in 31.10.41 — No. and date of last drunk — Period not reckoning towards freedom from extra fine N/A — Sheet No 4 — Signature OC Company, etc D.H. Taylor Capt — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	1/10/42	Pte		AASec 15(1) SOBD AWL in Kathu was absent from 2300 hrs 1/10/42 until 0815 hrs 2/10/42. About 9 hours AASec 15(1)	DS2205 Cpl Anderson J.H.	7 days FF	5/10/42	7th Brigade Dept	1 day forfeiture of pay 7 days stoppages
Field	11.2.43	Pte		AASec 15(1) SOBD AWL in Kathu was absent from 2300 hrs 11 Feb 43 to 0900 hrs 12 Feb 43 About 10 hrs)	DS1321 Cpl Kelly J.J. DS1329 Cpl Mendelsohn AS.	7 days CB	15.2.43	Campbell Sit Capt	forfeits 1 days pay 7 days CB
Field	7 May 43	Pte		AASec 15(1) SOBD AWL in Kathu, was absent from 1400 hrs 7 May 43 until 1930 hrs 7 May 43. (About 5 hrs 30 mins)	DS1312 Cpl Kelly, J.J.	7 days CB	12 May 43	Campbell Sit Capt	

(P10

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks ✱
Field	27 May 43	Pte		AA Sec 15(6) Absn from 2300 hrs 27 May until apprehended by mil police London at 0745 hrs 3 June, surrendering expenses to the amt of £1/1 (Absent 6 days 10 hrs 45 mins)	Lt. G. C. Bonnin	15 days FP	5 Jun 43	[illegible] Maj	Forfeit 7 days pay FR&I 14 (6) (a) 5 15 days pay by FR&I 14 (5) (6) stoppage £1/1
Field	2 Sep 43	Pte		AA Sec 15(6) WOAS AWL from 2200 hrs 2 Sep to 0700 hrs 3 Sep 43 (Absent 9 hrs)	D 51312 Cpl Kelly. R.	1 days CB.	2 Sep 43	[illegible] Capt	Forfeit 1 day pay FR&I 14 (5) (a)
Field	15 Oct 43	Pte		AA Sec 40 (1) Refused on parade to obey a lawful command given by his superior officer in that he at 1800 hrs on 15 Oct 43 after being duly warned for fatigue refused to do so.	D 52031 Cpl Fraser. J. and Pte Reid. E.D	10 days pay	26 Oct 43	[illegible] Lt Col	Forfeit 10 days pay by FR&I 14 (5)
Field	27 Feb 44	Pte		WOAS AWL from 0700 hrs 27 Feb 44 till 0630 hrs 29 Feb 44 Total absence (23 hrs 30 mins) AA Sec 15(1)	Cpl Reid Documents	Forfeit 2 days Pay FR&I 14 (5)	29 Feb 44	[illegible] Capt	Forfeit 1 days pay FR&I 14 (5) (a)

MFM 6
(AFB 122)
40/PAM/136 (3438)

No 5615[illegible] Name Lt/Sergeant Patricia Michael RYAN | Regt. Battery or Company | Corps C I C | Date of enlistment 26/11/39 | GC Badge | Service or Proficiency Pay n/a | Character

Company Conduct Sheet Date of last entry in | No and date of last drunk nil | Period not reckoning towards freedom from extra fine | n/a | Sheet No 5 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	27/8/44	Pte		AA Sec 15 WOAA AWL from 0700 hrs 27 Aug 44 to 0[illegible] hrs 28 Aug 44 Time 25 hrs 20 mins	Cpl Reid Documentary	Forfeits 1 days pay	1 Mar 44	Lt-Col Cleghorn	30/8/44 1 days pay forf 28/8/44 (1) 5 days pay forf 14/9/44 (1)
Field	28/8/44	Pte				2 days CB	30 Aug 44	2 Cond Capt	
Field	28/8/44	Pte		AA Sec 15 (1) Absent without leave, in that he did absent himself from P.T parade	1621157 Pte Platt RW	21 days FP 2 forf 21 days pay	22 Apr 44	SSI Cuthbert Lt Col	Forfeits 21 days pay 28/8/44 (1)
Field	14 Apr 44	Pte	1	AA Sec 19 - Drunkenness, in that he, at the night of 14 Apr 44 at a Corporation Woodside	[illegible]	[illegible]			

Certified true copy of records held in [illegible] Capt Adj

1 Fd Hy

Ex "B"

(Substitute for AFB 296 or MFB 355)

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED.

No. D-81862 NAME Terrence Patrick Michael RYAN UNIT 1st Bn The Black Watch (RHR) of Canada.

AGE 23 MARRIED OR SINGLE M S No. of Dependants none

DATE OF ATTESTATION 28 Nov 39

NO. OF DAYS SPENT IN CLOSE ARREST (TO DATE OF TRIAL)

CIVIL NIL MILITARY 3 HOSPITAL NIL TOTAL 3

DATES OF PROMOTIONS, APPOINTMENTS AND CONFIRMATION OF RANK, IF ANY

N/A

CERTIFIED TRUE COPY OF MFM 6 MUST ACCOMPANY THIS FORM.

Campbell Stuart Capt.-Adjt.
Officer i/c Records,
1st Bn The Black Watch
(RHR) of Canada

Dated at: In the Field

This 17th day of May 1944

(To be dated and signed as of date of trial)

Ammended May

COUNTER NUMBER 582,138

HOUR 10:45

OPERATOR'S INITIALS EDM

RELIEVING OPERATOR P.L

4 T-11

Cpl. Ryan T. J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B88160 Cpl Vernon James RYAN, 1 NETD

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Sec 15(1)AA	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings, see RP 44 and MML p 733, and in lost ~~[illegible]~~

~~NOT~~

At present under sentence for ~~[illegible]~~ beginning on (date) ~~[illegible]~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 17 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be reduced to the ranks and to undergo Detention for One (1) year and to be put on disciplinary of payment which has Made good (to the sum of £3-16-8 Cost of return)

(Sgd) ~~[illegible]~~ Judge-Advocate, if any. 7 Feb 45 Date awarded. (Sgd) [signature] President. (RP 45, 50.) Major

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 361-367. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

Date 17 Feb 45 (Sgd) J. H. Roberts

Commanding Maj-Gen. Cdn. Rft. Units. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B.88160 Cpl. Vernon James Ryan D.O. #32 "A" d/12 Feb 45.	15 Feb 45	[signature] Major.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 p 45-11

CFA96 (To Dept of AFAir) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Maj-Gen JH Roberts DSO MC Comd Cdn Rft Units dated 5 Feb 45

RECEIVED 2 FEB 1945 JAG BRANCH C.M.H.Q.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B88160	Cpl	Vernon James	RYAN	1 NETD

PROCEEDINGS REVIEWED

[signature] Capt

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 7 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Members, AA, if any~~, and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 33, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 10.15 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to [illegible] as interpreter?~~ Ans ~~[illegible]~~

~~The Interpreter is sworn.~~(1) Do you object to 7961 Sgt M Bindmans as shorthand writer? Ans No

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~AA, if any~~, and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E. M. Mullen	EDRE HQ CPR
Member	Capt	D. L. Mumford	1 CSRu
Member	Lieut	W. D. Pamenter	1 CSRu
~~Judge-Advocate~~			
Prosecutor	Capt	N. E. Cameron	1 NETD
Defending Offr	Lieut	M Cantin	1 NETD

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Di p 3.)

A8. The accused ~~[illegible]~~ before arraignment makes(s) (no) (or) plea

(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed~~ and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans ..... Do you intend to call witnesses on your behalf ?

Ans ..... Are they witnesses as to character only ? Ans .....

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3) (5), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans No Sir

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~notice~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex C respectively.(3)

(1. *MFB 355 or MFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes a big fine offer

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its provisos, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2312, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 367. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B-88160 Cpl Vernon James Ryan (CIC) on P.E. strength of No. 1 Cdn N.E.T.D. (Lorne Scots) a soldier of the Canadian Army Overseas is charged with:

WHILST ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

In That He

AA Sec(15)1

At No. 1 Cdn. N.E.T.D. (Lorne Scots) did illegally absent himself without leave from 1200 hours 7 Aug. 44 untill apprehended by the Civilian Police at Llandudno, N. Wales at 0940 hours 20 Jan 45. Incurring cost of return to unit, amounting to £ 3 .16 .8 (Three pounds, sixteen shillings and eight pence). Total absence 165 days 21 hours, 40 minutes.

(John H. Barber) - Major
A/Officer Commanding,
No. 1 Cdn N.E.T.D.
(Lorne Scots)

Tweedsmuir Camp
Tumsley, Surrey

To be tried by Field General Court-Martial

(J.H.Roberts) Maj-Gen
Comd
CdnRft Units

In the Field,
5 Feb 45.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(8).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B88160	Cpl		Vernon James	RYAN	1 NETD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 5 Feb 45 endorsed by me, ~~(or by an offr of my staff (or me)~~, " To be tried by Field General Court-Martial ";

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have set forth herein.~~

~~5. I nominate as Judge Advocate the Offr mentioned hereunder.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	E.M. Miller ED	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Capt	To be detailed by OC	1 CSRU
A Lieut	To be detailed by OC	1 CSRU
~~XXXXX~~	~~XXXXXXX~~	
(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
~~XXXXX~~	~~XXXXXXXXXXXX~~	
(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England
(Country.)

Date 5 Feb 45

(Signed personally. RP 105 fn 2.)
(J.H.Roberts) Maj-Gen
Commanding Cdn Rft Units
Convening Officer.

Maj-Gen
(Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A(CFA85 (In lieu of AFA3) 40/F & S/1867 (4631))

(See overleaf for oaths and notes for use on trial.)

Medical Officer's Certificate
KR (Can) Para 557

I certify that I have this morning examined No. B-R.B 160 Rank. Lt.

Name. R.yan ... V. I. of. R.C.A.S.C. ..... (unit) and in my opinion he is ~~unfit~~ fit to under go trial by Court Martial.

Station. ICMETD .....

Date. 7. Feb. 45 .....

W Denny Capt. .....
Medical Officer
No. 1 Cdn. N.E.T.D.
(Lorne Scots)

D7

CASE OF

E-1 R-88160 Corporal RYAN, T.J. (CIC) on PE No. 1 NETD

PLEA IN MITIGATION OR SENTENCE

The accused here, Cpl Ryan, enlisted in 1939, came overseas, went to France with his unit, came back, went to Italy and served all through the campaign of Sicily and Italy. While in Italy, he got a letter from his wife telling him about trouble at home. He asked his OC for compassionate leave. Being a good soldier, his OC arranged for him to go on a POW draft. He came here to England, waited for awhile was not put on any POW draft and never went to Canada. After being in Sicily and Italy and being back in England, he went on leave in England. He met somebody and went away with her. He carried on like this until he found out he was AWL and was sort of shy of coming back until the day he could not face it any wise and on account of remorse, he gave himself up to the military police. He has a white Crime Sheet and I believe, gentlemen, all he is asking now is to be given a chance to go back into action of which he has never been afraid, always doing his duty like a good soldier. He happens to have the very bad misfortune of pleading guilty to-day but I am sure you will give him every consideration. He is A cat. He was sent from NETD to "Overflow" NETD, pending his trip home as POW escort. He does not know why he has been put on the PE of No. 1 NETD.

SUMMARY OF EVIDENCE

In the case of B-88160 Cpl Vernon James Ryan (CIC) on P.E. strength of No. 1 Cdn N.E.T.D. (lorne Scots) a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on Oath.

First Witness for the Prosecution

Capt. H.E. Couch, RCA, Adjutant No. 1 Cdn N.E.T.D. (Lorne Scots) having been duly sworn states as follow:

"I produce a certified true copy of Declaration of Court of Inquiry d/1 Sept. 44 relating to the accused"
(Copy of Declaration attached as Exhibit "A")

I also produce an Army Form O.1618 d/20 Jan 45 purporting to be signed by Committing Magistrate at Llandudno, N. Wales, relating to the accused. (AFO 1618 attached as Exhibit "B")

I also produce Expense Voucher Relating to the accused, signed by Lieut. J.A. Thompson, Admin Offr - DPMs' BR C.M.H.Q. (Marked Exhibit "C")

H.E. Couch / Capt.
(H. E. Couch)

The accused declined to cross examine this witness.

The accused was cautioned as follows: "Doyou wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you may give will be taken down in writing and may be given in evidence."

The accused declined to give any statement and reserved his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down in the presence and hearing of the accused and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

G.F. Adamson Lieut.
(G.F. Adamson)
Officer Detailed to take the Summary of Evidence.

Tweedsmuir Camp
Thursley, Surrey

EXHIBIT "A"

RECORD of the Declaration of a Court of Inquiry assembled at Tweedsmuir Camp Thursley, Surrey on the 1 day of September 19 44 for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B-88160 Cpl. RYAN, V.J.

DECLARATION

The Court declare that No. B-88160 Cpl. RYAN, V.J. formerly of No. 1 C.R.O. (RCASC) and now on transit strength of No. Cdn N.E.T.D. (Lorne Scots) illegally absented himself without leave at Tweedsmuir Camp, Thursley Surrey, England at 1200 hours on the 7th day of August 1944, that he is still so absent, and that on the 28 August 1944 he was deficient, and that he is still deficient of the following articles :—

ARTICLES	VALUE	ARTICLES	VALUE
AS PER LIST ATTACHED			

Capt. M. DeBlois President

Lieut. G. Guy Member

Signed at No. 1 Cdn N.E.T.D. (Lorne Scots)

Lieut. H.E. Couch Member

this 1 day of September 19 44

Signature of Commanding Officer (Louis Keene) Col, #1 Cdn NETD (Lorne Scots)

Certified true copy

Signature of Officer having custody of original record

3/60B MFB 375-AFB 115 40/P&S/392 (6610)

DESCRIPTIVE RETURN OF § Vernon James RYAN who ‡ apprehended at Llandudno (hour) 0940 on the Twentieth day of January, , and was committed to confinement at Llandudno on the Twentieth day of January, 1945 as a Deserter (or Absentee without leave) from the Bn. of the Royal Canadian Army (Service Corps) Regiment of

Age 33 years	Height 5 feet 8½ inches	Feet 5	inches
Complexion Pale	Hair Lt.brown	Eyes Blue	
Marks Tattoo on neck	In uniform or plain clothes Uniform		

Probable date and place of attestation	Not known
Probable date of desertion or beginning of absence and from what place	7th August, 1944
Name, occupation and address of the person by whom or through whose means the Deserter (or Absentee without leave) was apprehended and secured	Pct.Constable 2 Jones, and P. Constable H. Hughes, both of Police Station, LLANDUDNO.

Particulars in the evidence on which the prisoner is committed, and showing in what manner and upon what grounds he was apprehended. The fullest possible details to be given.

* The Police Officers mentioned above visited a flat at Lloyds Buildings, Llandudno at 0940 hrs 20/1/45 following receipt of information regarding the presence of a soldier there. RYAN was seen, arrested, and he later admitted being a deserter.

I DO HEREBY CERTIFY that the Prisoner has been duly examined before me as to the circumstances herein stated, and has declared in my presence that he† is a Deserter from the before-mentioned Corps.

Signature of Committing Magistrate

Residence

Post Town

20th Jan., 1945. Date of Signature

Signature of Prisoner

H. J. Hughes Inspector. Signature of Informant

Or where the Prisoner confessed, and evidence of the truth or falsehood of such confession is not then forthcoming

I HEREBY certify that the above-named Prisoner confessed to the circumstances above stated, but that evidence of the truth or falsehood of such confession was not forthcoming, and that the case was adjourned from the day of for the purpose of obtaining such evidence.

CANCELLED

Signature of Magistrate

Residence

Post Town

Jan 20 1945 Date of Signature

§ Care should be taken to insert Army No. and Rank.

‡ Insert "was apprehended" or "surrendered," as the case may be.

* It is important for the public Service, and for the interest of the Deserter or Absentee without leave, that this part of the return should be accurately filled up, and the details should be inserted by the Justice in his own handwriting, or under his direction, by his Clerk.

† Insert "is" or "is not a Deserter" or "Absentee without leave from," or "belongs," or "does not belong to," as the case may be.

EXHIBIT "C"

Expense Voucher Re— Ref: KR & O (Can) 539

Reg No B88160 Rank Cpl. Name Rigou, V. J Unit MET D

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit from~~ London from Colwyn Bay

Date	Particulars	Amount		
23 Jan 45	Escorts return fare from LONDON To Colwyn Bay	1	13	9
	Prisoners single fare to LONDON From Colwyn Bay		16	11
	Prisoners fare from to			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares	1	6	0
	Total £	3	16	8

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

J. A. Thomson LIEUT.
J. A. THOMSON,
ADMIN. OFFICER—D.P.M's P.R.
C.M.H.Q. Capt

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London

1/35 CMHQ 190-55 40/P & S/483 (6762)

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B-88160	Cpl.	RYAN V.J.	No. 1 Cdn. N.E.T.D.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary must be compiled from the field conduct sheet.

The conduct sheet(s) produced should be produced in court with this statement and not annexed to the proceedings.

† See para. 671, K.R., 1940.

* The numbers herein entered should agree with the number of entries in the conduct sheets, permission being given to the most serious charge in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	NIL times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct~~

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~

~~3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for~~ ~~beginning on the~~ ~~day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 12 17 days in military custody, making a total of 12 17 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~attestation~~ attestation paper is 33 yrs 211 days

6. The date of his ~~attestation~~ specified in his ~~attestation~~ attestation paper is 14-11-39

~~7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is~~

~~8. The accused is entitled to deferred pay or gratuity in respect of service~~

~~9. The accused is entitled to reckon service for the purpose of determining his pension, etc.~~

10. The accused ~~is in possession of, or entitled to,~~ no military decoration or military award ~~(or is in possession of, or entitled to (*state any military decoration or reward*))~~. C.V.S.M. & Clasp 1939-43 Star

~~(*If the accused is a warrant officer.*)~~ The accused before he was made a warrant officer last held the regimental rank of N.A.

12. (*In the case of an officer.*) ~~The accused holds in the army the rank of dated~~ and in his regiment (*or* corps *or* department) the rank of dated

(*25,800) W/L24826/1730 20,000 10/43 A.& E.W.Ltd. Gp.698
(20,000) W/L25814/1499 12,000 2/44 " "

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B-88160 Rank Cpl Name RYAN V.J. of # 1 Cdn N.R.T.D. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer dispensing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 7 day of February 1945

(M. DeBlois) - Capt.
Officer i/c Records.

13 The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

In the rank of CORPORAL Date of Promotion

or in the rank of 26 June 43

in the rank of

(Instructions—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the reasons why the information cannot be stated from such books as are available and the paragraphs completed accordingly.)

No. B 88160 Name Ryan, V.J. Sqn, Battery, or Company N/A Corps RCASC Date of enlistment 14 Nov. 39 GC Badges Service or Proficiency Pay N/A 3/17 MFM 6 (AFB 122) 40/PAS/100 (5418)

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial with trial	By whom awarded	Remarks
SHEET destroyed 22 Mar 44; last entry 22 Mar 42 ; no cases of drunkenness						Signed S . Shankman Lieut.			

Certified True copy of original document in my possession

(M. Deblois) Capt.
Records
No. 1 Cdn. N.E.T.D.

(PTO)

HQ. I CDN. N.R.T.D. (LORNE SCOTS)

Q.M. STORES,
1 Sep 44.

KIT DEFICIENCIES
B 88160 Cpl. Ryan, V.J.

Article	No.	Vocab. rate	Less 25%
		£ . 4. 5	£ . 3. 3½
Anklets, web, prs	1	2. 7. 0	1.15. 6
Blouses, B.D.	2	2. 8.10	1.15. 7
Boots, ankle, prs	2	2. 6	1.10
Caps, field service	1	3.10	2.11
Drawers cell shorts	2	2. 1	1. 7
Gloves, knitted, prs	1	2.10. 7	1.18. 6
Greatcoats, drab	1	8. 0	6. 0
Jackets, sweater	1	18. 2	13. 8
Shirts, angola, drab	2	2.11	2. 2½
Shoes, canvas, prs	1	5. 0	3. 9
Socks, prs	3	2. 8. 3	1.16. 4½
Trousers, B.D.	2	4. 7	3. 5½
Bags, kit, universal	1	1. 4	1. 0½
Braces, prs	1	2	1½
Brasses, cleaning	1	1. 2	.10½
Brushes, button		2. 2	1. 7½
Brushes, clothes	1	1. 6	1. 1½
Brushes, hair	1	1. 8	1. 3
Brushes, shaving	1	1. 2	.10½
Brushes, blacking	1	1. 3	.11½
Brushes, polishing	1	6	4½
Brushes, tooth	1	1. 6	1. 1½
Caps, comforter	1	2	1½
Combs, hair	1	4	3
Forks, table	1	.10	7½
Holdalls	1	9	7
Housewives	1	3.10	2.11
Knives, clasp	1	8	6
Knives, table	1	3	2½
Razors, safety	1	4	3
Spoons, dessert	2	2.10	2. 1½
Towels, hand	1	3. 8	2. 6
Bottles, water	1	1. 4	1. 0
Braces, right	1	8. 0	6. 0
Haversack	1	10. 0½	7. 6
Helmet, steel	1	1. 7	1. 2½
Tins, mess	1	12. 4½	9. 3
Capes, s.s.	1	1. 3. 9½	17. 10
Respirator complete w/acc.	1	£ 16. 6. 5	£ 12. 7. 6

"Certified that this is a true list of the kit deficiencies of B.88160 Cpl. Ryan, V.J. as of 1 Sep 44."

(J B. Lindner) Capt/QM, 1 Cdn. N.R.T.D. (LORNE SCOTS)

LIST OF WITNESS

FOR THE PROSECUTION - A/Capt. H.E. Couch, R.C.A.
Adjutant No. 1 Cdn. N.E.T.D. (Lorne Scots)

FOR THE DEFENCE - NIL

LIST OF EXHIBITS

EXHIBIT "A" - Certified true copy of Declaration of Court of Enquiry d/1 Sept. 44.

EXHIBIT "B" - Army Form O 1618 d/20 Jan 45 from committing magistrate at Llandudno, N. Wales.

EXHIBIT "C" - Expense voucher d/23 Jan 45 for £ 3 16 8

STATEMENT BY ACCUSED

It is my wish that the Commanding Officer detail an Officer on Transit Strength of No. 1 cdn N.E.T.D. (Lorne Scots) to act in my defence at my trial.

K-88160 Cpl. Ryan, W.J.
(K-88160 Cpl. RYAN, W.J.)

QQ-46
TPR RYAN W.J.P.

Correspondence to be PINNED here.

QQ-42

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS. A.

Order convening the Court.

On Active Service, this 18th day of September, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 1 Canadian Corps HQ&SC, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*and that it is not practicable to delay the trial on reference to a superior qualified officer;~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable

~~*(I am unable to appoint~~
~~*(1. Three Officers to form the Court.)~~
~~*(2. A Field Officer as President.)~~
~~*(3. Three Officers having more than one year's service)~~
~~for the following reasons, namely :—)~~

Campbell V. Bruce Brig President.

D. Cunliffe Capt 6 Oct 43

President.		
Rank.	Name.	Regiment.
Major	C. Osler	1 Cdn Lt AA Regt, RCA
Members.		
Rank.	Name.	Regiment.
Captain	To be detailed by OC 32 Cdn Corps Tps Coy, RCASC	
Lieutenant	To be detailed by OC 31 Cdn Corps Tps Coy, RCASC	

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed E. A. McCusker (E.A. McCusker) Brigadier
D.D.M.S. 1 Cdn Corps.

Commanding *Convening Officer.*

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B-61398 Trooper Wilbert Joseph Patrick RCAC 1 Can Armd C Regt (RCD)	First Charge Section 40 Army Act.	Not Guilty	Guilty	27 Septbr 43 Confirmed T A McCuskar. E.A. McCuskar, Brig: D.D.M.S., 1 Can Corps.
	Second Charge Section 40 Army Act.	Guilty	Guilty	
	Third Charge Section 15 (1) Army Act.	Guilty	Guilty	
	(For particulars of the above charges see charge sheet attached.)		To be put under stoppages of Pay until he has made good the sum $3:18:4 in respect of costs of Prosecution. To undergo detention for 70 Days Campbell M Bruce President	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) T A McCuskar. (Signed) Campbell M Bruce
(E.A. McCuskar) Brigadier — 1 Can LAA Regt
Commanding DDMS 1 Can Corps. — *President.*
Convening Officer (*e*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 21st & 22nd day of September, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)

were duly sworn.

* Omit if not applicable.

Signed this 22nd day of September 1943.

Campbell M Bruce
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (*b*) on page 702 M.M.L. 1929.

*I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

*(~~I direct that the soldier named in the margin be not committed to prison until further orders.~~)

T. A. McC.

Signed this 27 day of Septr 19 43

T. A. McCuskar.
E.A. McCuskar, Brig:
Confirming Officer
D.D.M.S., 1 Can Corps.

Promulgated and extracts taken in the case of

(*a*) (Dated) 30 Sep 43 (Signed) (J F Bingham) Lt Col
Comd 1 Can Armd C Regt (RCD)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET:

The accused, B 61398 Trooper Wilbert Joseph Patrick Ryan, 1st Armoured Car Regiment (RCD), a soldier of the Canadian Army Overseas, is charged with :-

FIRST CHARGE
Sec 40 A.A.

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field, on the night of 17-18 August 1943 assisted C 51504 Tpr MacKay S E to escape from the Regimental Guard Room.

SECOND CHARGE
Sec 40 A.A.

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field, on the 17th August 1943 after being duly warned by B 138 Cpl Burgess I D to be on Sqn Guard at 2300 hours neglected to be there.

THIRD CHARGE
Sec 15 (1) A.A.

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, at approximately 2300 hours, 17th August 1943, absented himself without leave until apprehended by the Military Police at Manchester at 0700 hours, 28th August 1943. (Total absence 10 days, 8 hours) Incurring cost of apprehension and return to the extent of £ 3. 18. 4.

In the Field
16 Sep 43

Training Capt.
[illegible] Burgess I D [illegible]
Comd
1 Armd C Regt (RCD)

To be tried by Field General Court Martial.

T. A. McCusker
(T.A. McCusker) Brigadier
D.D.M.S. 1 Can Corps.

In the Field
18 Sep 43

Campbell W.S. Maj
Prosecutor

MEDICAL OFFICER'S CERTIFICATE

K. R. (Can.) Para 557

I certify that I have this morning examined No B 61398 Tpr Ryan W J P of 1 Armd C Regt (RCD) and in my opinion he is Fit ~~Unfit~~ to undergo trial by court-martial.

Station In the Field

Date 22 Sep 43

B F Myers Capt
Medical Officer

PAGE 1.

Accused B 613 78 Tpr. Wilbert Joseph Patrick Ryan 1st Armoured Car Regt. (RCD)
(Number) (Rank) (Christian Names) (Surname) (Unit)

Held in the Field in England on 21 Sept 1943.
(Country) (Date)

PRESIDENT: Major E. Baker 1 Can Sqn RA Regt RCA.

MEMBERS: Capt W.B. Kelly 32 Can C.T. Coy RASC

Lt J.C. Parker 31 Can C.T. Coy RASC.

~~JUDGE ADVOCATE~~ (If any):

~~OFFICERS UNDER~~ INSTRUCTION:

PROSECUTING OFFICER: Lt V.M. Singer Lawyer? Ans. NO

DEFENDING OFFICER: Lt A.L. Dickie Lawyer? Ans. NO

(The following procedure must be actually carried out.)

The Convening Order; the ranks, names and corps of Officers appointed to serve on the Court; the Charge Sheet(s) and the Summary of Evidence are laid before the assembled Court by the President. (Rs.P. 17(E), 22(A).)

The Court, in private (R.P. 22 Fn.1), satisfy themselves that it is properly convened (A.A. 49: R.P. 105) and constituted; that the accused is/are amenable to Military Law and that each charge discloses an offence. (R.P. 106)

The accused is/are brought before the Court and at 1030 hours the trial commences.

The Prosecuting Officer produces a Medical Certificate (K.R. (Can) 557; ~~CAMC Circular 1944/47 para 227~~) that the accused is/are fit to undergo trial by Court Martial. ~~This~~ certificate is initialled by the President and attached to the Proceedings.

The Convening Order is read in the hearing of the accused.

The names of the President and Members of the Court are read to the accused (R.P. 110).

President to accused:
Do you object to be tried by me as President or by any of the officers whose names you have heard read over? (R.P. 110(3)). Ans. No.

The President, Members, Judge Advocate and Officers under Instruction are duly sworn (Rs.P. 26, 27, and 111.) (Forms of Oath on Page "D".)

President to accused:

~~Do you object to _____ as interpreter?~~

~~The interpreter is duly sworn.~~

Do you object to L/Bdr McKegney as shorthand writer? No

The shorthand writer is duly sworn. (Forms of oath on Page 'L'.)

The Charge Sheet(s)is/are initialled by the President.

The Prosecuting Officer informs the Court that the accused ~~has~~/has not elected trial by Court Martial (A.A. 46 (B).)

If special plea(s) is/are made for separate trial on one or more charges (R.P. 62 (B), 108); or as to the jurisdiction of the Court (R.P. 34); or in bar of trial (R.P. 36), or as to accused's mental fitness to stand trial (A.A. 130, R.P. 57), record such pleas and evidence (if any) on separate sheet(s), to be initialed by the President and attached to the Proceedings. Where accused does not plead intelligibly or refuses to plead, see R.P. 35(A).

Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (R.P. 112).

He pleads as follows:

First Charge	NOT GUILTY	Sixth Charge	
Second Charge	GUILTY.	Seventh Charge	
Third Charge	GUILTY	Eight Charge	
Fourth Charge		Ninth Charge	
Fifth Charge		Tenth Charge	

(For procedure on alternative charges, see R.P. 37, fn. 2.)

Further proceedings are recorded on Pages hereto attached.

PAGE 'C'

(For use when there are pleas of 'Guilty' and 'Not Guilty'.)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President.)

R.P. 39(B) is complied with, in respect to 'Guilty' pleas, by the President ascertaining that the accused understands the nature of the charge(s) (fn.3) and his plea thereto, explaining the difference in procedure by the plea (R.P. 37(B)), and advising him to withdraw his plea if he thinks the accused ought to plead 'Not Guilty' thereto.

2. President to accused:
Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with and that you have been prejudiced thereby or that you have not had sufficient time for preparing your defence? (R.P. 39(A)) Ans. No.

3. The Prosecutor's opening address (if any) R.P. 39(B)) and the evidence of the Prosecution are recorded on separate sheets, initialled by the President and attached hereto. (See RECORD OF EVIDENCE on Page 'D'.).

4. The prosecution is closed. (If submission that no prima facie case established, see R.P. 70 fn.1; R.P. 70 fn.1.)

5. The accused is informed that he may, if he wishes, give evidence but if he does so, he will be liable to cross-examination (R.P. 40 fn.2), or that he may, if he wishes, make an unsworn statement upon which he can not be cross-examined. (R.P. 40(D)(ii)(a)).

President to accused:
Q. Do you apply to give evidence yourself as a witness? Ans. No.
Q. Do you intend to call any other witness in your defence? Ans. Yes
Q. Is he a witness as to character only? (R.P. 40(B)) Ans. No.

6. The evidence for the Defence (if any) is recorded on separate sheets, initialled by the President and attached hereto.

7. The closing addresses of the Prosecutor, Defending Officer and Judge Advocate (if any) are recorded on separate sheets, initialled by the President and attached hereto. (For order of addresses, see Rs.P. 40, 41, and 42.)

9. The Court is now closed to consider the Finding. (Rs.P. 43, and 117)

10. The Court being re-opened, the accused is again brought before it and the Findings of 'Not Guilty' (if any) are pronounced (R.P. 117(B)).

11. The charges to which the accused pleaded 'Guilty' are read to the accused.

12. President to accused:
Q. Do you desire to make any statement of the circumstances in reference to the charge(s) to which you have pleaded 'Guilty'? (R.P. 37(B)) Ans. No.

(Statement (if any) not on oath, is recorded on separate sheet, initialled by the President and attached hereto. Accused is not subject to cross-examination thereon.)

13. Summary of Evidence is read aloud, in the presence of the accused, initialled by the President and attached to the Proceedings. (If no such summary, it is necessary for determination of Sentence that sufficient evidence be taken and recorded on separate sheet, initialled by the President and attached to the Proceedings (R.P. 37(B)).

14. President to accused:
Q. Do you wish to call witnesses as to character? (R.P. 37(C)). Ans. No.

15. Statement of Character and Service (A.F.B. 296) and Field Conduct Sheet (M.F.M. 6), signed in the manner required by A.A. 163 (1)(c), and [illegible] purporting to refer to the accused by his number (if any), rank, name and Corps, are produced to the Court, read, marked '6' and '4', [illegible] identified by the President and attached to the Proceedings [illegible] Queen's R.O. 3131.)

16. President to accused:-
Do you wish to address the Court on the Statements of Character, Service and Conduct and in mitigation of punishment? (Rs.P. 37(6), 46(D)) Ans. Yes. (No cross-examination.)

(Record address (if any) on separate sheet, initialled by the accused and attached hereto.)

17. President to accused.
The Court is closed for consideration of the sentence. The sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the Proceedings in Open Court are accordingly terminated. (Overseas R.O. 3262).

(Record finding and sentence on page [illegible] of A.F.A. P.)

(Punishments - A.A. 44, M.M. (Can) 563 - 566: Sentence of F.G.C.M. - R.P. 116; one sentence only to be awarded - R.P. 48; sentence should be dated.

[signature]
(Signature of President)

PROSECUTION

Opening Address By Prosecution

Sir the only charge which is now in question is the first charge that of aiding Trooper McKay to escape.

The evidence that I shall bring forward as regards to this charge is purely of a circumstantial nature. In other words I have no direct evidence that Trooper Ryan did actually aid McKay to escape. However I have evidence which will show that the circumstances surrounding Ryan's actions on that particular night so intrically involve the accused in the escape that the Court can come to only one conclusion that is that, Ryan did aid McKay to escape.

I shall call evidence first to prove that on the night in question McKay did escape. 2nd. that some hour before the escape of McKay [illegible] appeared at the Regt'l Guard Room and acted in a suppicous manner. 3rd. that the accused went absent at the same time McKay escaped and was apprehanded in the same place as McKay and finally that McKay when he escaped was wearing a suit of coveralls and when he returned was wearing a uniform of the accused

First Witness

P1673 A/Sgt. Rescorl, P. having been duly sworn states:
I am A/Sgt. Rescorl, P. 1Cdn armoured Regt. R.C.A.M.D.

Q. On the night 17/18 Aug. 43. How were you employed ?
A. I was the Regt'l Guard Commander.
Q. On that day who was one of the prisoners ?
A. On that day one of the prisoners was Trooper McKay.
Q. What was the last time you saw McKay in the Guard Room ?
A. The last time I saw McKay in the Guard Room was at 22.45hrs.
Q. Did you later find that McKay was absent ?
A. After obtaining information from my sentry that the prisoner's door was open I went downstairs and found that McKay was absent from his cell which was at approximately 0120hrs.
Q. What action did you take ?
A. I informed the Provost Sgt. and then went to RHQ to inform the Orderly Officer of the day.

CROSS EXAMINED BY THE DEFENCE

Q. Would I be right in saying that the Guard as a whole and all the occupants of the building in which the prisoners were confined could have access to the bar on the Prisoners' Door and could remove it.
A. Yes Sir that would be right.

EXAMINED BY THE COURT.

Q. Can you give a description of the building in which the prisoners were confined ?
A. The prisoners were on the basement floor. The door leading down to the basement was in the hallway. There is also another door leading out to the street from the basement without coming up into the house atall. There are four rooms in the basement two only which are being used. The Guard Room is the Front Room of the first floor. There is also a door leading to the back of the building on the first floor. There are three floors to this building. The Door Leading down to the prisoners is locked by a large bar with a small slide bar.

In the opinion of the Court it is unecessary to comply with R.P.83(B)

Second Witness

B61325 Trooper Lince, G.R. having been duly sworn states:

I am B61325 Trooper Lince #1 Cdn. Armoured Regt. R.C.D.

Q. On the night 17/18 Aug. 43, how were you employed ?
A. I was on Guard Duty Sir.
Q. At approximately 0001hrs. that night what was your post ?
A. My post was in front of the Regt'l Guard Room from 1200hrs till 0200hrs.
Q. At approximately 0100hrs. that night did you notice anything suspicous ?
A. At approximately that time Trooper Ryan came up to me and asked to go up and see L/Cpl. Snider who slept upstairs over the Guard Room. I told him yes and he went inside and stopped in front of the Guard Room Door. At that time I saw a figure walking north on 4th. Ave. keeping close to the hedge, and stop behind the pillar which forms the gateway leading into the Regimental Aid Room.

He stood there for a few seconds then came up to me and asked if he could use the lavatory which was at the back of the building. I then recognized this figure as Trooper Brown. I said he could and followed him in . At that time Trooper Ryan who was still standing in front of the Guard Room Door went upstairs and Brown went through to the lavatory In a short time Ryan came down stairs and Brown came from the lavatory. They stopped in front of where I was standing in front of the door into the switchboard room.

Trooper Ryan asked me if there was anything to eat in the Guard Room and I said yes and then got them each a snadwich which had been left over from the Guard. Then they both went out and I followed them. They went as far as the gate again and stopped. From there they asked me if they could go around the back way to "A" Squadron Lines and I said yes.

Later I heard the back door banging so I went through and closed it. On my way back to my post I noticed that the door leading down to the cells was slightly open. The bar which had held the door was lying on the floor. I called the guard Commander and he went down to see if everything was alright This was at approximately 0115hrs.

Q. Did you say that it was at approximately 0115hrs when you saw that the bar was down ?
A. Yes Sir.
Q. When was the last time you saw the bar in position ?
A. When Brown was at the back as I could see it from my post.
Q. When Brown and Ryan went out of the building was the bar up ?
A. It was up when Brown came from the back of the building but when they went out I didn't see it.
Q. Was the back door locked during the course of the evening ?
A. It was open when I came on duty.
Q. Did you close it ?
A. No Sir not till I went back to investigate later.
Q. When you were standing guard what was your exact position ?
A. At the top of the steps leading up to the Guard Room Building.
Q. From that position could you see the door leading down to the cells.?
A. No Sir.
Q. Why ?
A. Because there was ~~equipment~~ corner in the passage way which leads to the back door.
Q. From the time that Ryan and Brown went around the Guard Room Building to the back until you heard the back door banging did anyone else go around.?
A. No Sir.
Q. Could a person enter the building from the back door which opens unto the yard and remove the bar from the door leading down to the cells without you seeing them ?
A. Yes Sir.
Q. Could the bar have fallen down by itself ?
A. I don't think so Sir.

Second Witness Contiued:

Q. What action would be necessary to remove it from it's socket ?
A. It would take somephysical action.
Q. Did the actions of Ryan and Brown that evening make you suspicous ?
A. Not particularly at the time.but later when they came up to me at my post they seemed a little nervous and lingered in the hallway for awhile before they went out.
Q. What did they do when they lingered in the hallway before going out ?
A. They didn't do anything but just stood there.
Q. Did they look around ?
A. They might have done so but I didn't know it.

CROSS EXAMINED BY THE DEFENCE.

Q. You say that when Ryan and Brown left the Guard Room you don't know whether the bar on the door leading down to the cells was up or down ?
A. That is correct.
Q. Do you recall making a statement on oath that the bar was up when they left
A. I don't remember Sir.

RE/EXAMINED BY PROSECUTION

Q. When was the last time you saw the bar up on the door.
A. When Trooper Brown came from the back at approximately 0105hrs.
Q. When was the first time that you noticed that the bar was down ?
A. At approximately 0120hrs.

Court EXAMINES

Q. Would you be able to tell if anybody came downstairs from the 2nd.or 3rd. floors between the times you last ~~xxxx~~ saw the bar in place and when you saw it down ?
A. If someone came down quietly I could not.

In the opinion of the Court it is unnecessary to comply with R.P.83(B)

Third Witness

L54619 Sgt. Zavergantiz, W. having been duly sworn states:
I am L54619 Sgt. Zavergantiz, W. Regt'l Provost.

Q. Do you recognize this tunic ?
A. Yes Sir.
Q. Will you tell the Court where yous saw it before ?
A. This is the tunic that Trooper McKay was wearing when he returned from Manchester. Later on I checked with the number on the tunic and found that it belonged to Trooper Ryan.
Q. What action did you take on discovering that the number on the tunic corresponded to Trooper Ryan's number ?
A. Later on I questioned Trooper Ryan.
Q. What did you ask him and what did he say to you ?
A. I asked Trooper Ryan how McKay got hold of his uniform and Trooper Ryan informed me that he gave the Battle Dress Blouse to McKay on the night of his escpae between the hours of 2 and 3 in the morning.

Cross Examined By the Defence.

Q. Did you say that you were told that the tunic was given to McKay be Ryan ?
A. Yes Sir Ryan told me himself.
Q. At what time of the night did you go the Regt'l Guard Room to see if Trooper McKay had escaped ?
A. At approximately 0145hrs. I went to the cell and discovered that McKay had escaped.

In the opinion of the Court it is not necessary to comply with R.P. 83(B)

DEFENCE

C51504 Trooper McKay having been duly sworn states:
I am C51504 Trooper McKay, S.E. #1 Cdn. Armoured Regt. R.C.D.
Q. Were you assisted in your escape from the Regt'l Guard Room by this man Ryan ?
A. No Sir.
Q. When you were in the cell below did you hear any voices in the hall above ?
A. Yes Sir.
Q. Whose were they ?
A. Trooper Ryan and Trooper Brown
Q. On hearing those voices did you make any decision ?
A. Yes Sir.
Q. What was it.?
A. I wanted to go up and see them.
Q. Did you ?
A. I went upstairs but did not talk to them.
Q. Why ?
A. Because they were not there.
Q. Did you expect to be visited that night ?
A. No Sir.
Q. When you left the Guard Room Building was there anyone in sight ?
A. No Sir.

CROSS EXAMINED BY THE PROSECUTION

Q. McKay how well do you know Ryan ?
A. Very well Sir he is in my Troop.
Q. How long have you known him ?
A. Ever since I came Overseas.
Q. Did you ever go out with him ?
A. Yes Sir.
Q. How did you escape ?
A. I came up the stairs and the door was open.
Q. What was the first thing you did when you got outside ?
A. Well Sir I got out of there as fast as I could,
Q. Who was the first person you spoke to after you got out of there ?
A. I didn't speak to anyone for awhile and then I ran into Ryan in "A" Squadron Lines.
Q. Was this a chance meeting ?
A. Yes Sir.

In the opinion of the Court it is unnecessary to comply with R.P.83(B)

DEFENCE

SUMMING UP BY THE DEFENCE OFFICER

Sir in the case of the prosecutor bringing forth witness Trooper Lince he has on their own evidence proven that the accused Trooper Ryan entered the Guard Room Building by the front door went upstairs and on the evidence of one trooper Lince came down stairs spoke to him and left the building.

The prosecution has not offered any evidence that the accused came anywhere near the barred door of the basement but on the contrary have shown us that he definitely did not.

The charge of assisting the escape from the Regt'l Guard Room must be supported by concrete evidence that the accused did assist in his breaking out of a building or as a matter of fact one room of that building.

The prosecution has tried to establish a weak chain of purely circumstantial evidence that it was a pre-arranged and deliberately planned escape. Again no evidence was produced that the accused did anything else other than to call at the Regt'l Guard Room and ask to see one L/Cpl. Snider an occupant of one of the upper top floors of the building.

The prosecution has tried to establish a friendship between the accused and the escaped McKay that was completely out of proportion to the comradeship existing between Ryan and McKay. The defence has submitted the sworn statement of Trooper McKay to the fact that he was in no way to his certain knowledge assisted by the accused

In the opinion of the Coirt it is unnecessary to comply with R.P.83(B)

PROSECUTION

SUMMING UP BY THE PROSECUTING OFFICER.

On the basis of the evidence before the Court on this charge I will again point out to the Court that the case for the prosecution rests solely on circumstantial evidence. I submit that fate has woven a chain of circumstances around McKay's escape and Ryan's actions that night that are much too intrically entwined to be mere coincidence,

It is too much to ask the Court to believe that on the same night that McKay escaped the accused accidentally wandered into the Guard Room with no purpose in view. This mark you, after he had been warned for Guard Duty and had failed to show up. Surely the accused by entering the Regt'l Guard Room was bearding the Lion in his den by previously committing a grievous offence that same evening.

Further we have the fact that for some again mysterious reason the accused absent from his post was wandering aimiably about 4th. Ave. at about approximately 0120hrs. in the morning when he suddenly met a man to say the least he must have known was [illegible] and who also [illegible] of a friend of his. Further the accused takes McKay to his quarters and gives him apparently quite voluntarily a Battle Dress Blouse The purpose again is obvious.

We have evidence given by Trooper Lince that at 0105hrs. the bar was on the door, that some 15mins. later it was not, on the door, that some physical effort was required to move the b r from it's position, that the only people who were around the Regt'l Guard Room at that time was the accused and another fine soldier named Brown.

I submit to the Court that if they look at this diagram they can surmise as to how McKay managed to effect his escape. I submit again purely on the basis of the evidence that has been given that Ryan and Brown came in the front door of the building and did what is known as a brief recce of the building. sufficient to make the guard on duty suspicous, that they then left the building went around to the back by the footpath in the back door up to the door leading down to the basement removed the bar from the door and permitted McKay to escape.

This being possible because the guard could not fully command a view of all these exits and entrances which fact the accused became acquainted with at 0105hrs. that night.

I further suggest that it is a strange coincidence that McKay should have been awake at the time Ryan was there in the building and able to know that Ryan had been there atall.

As for the evidence of the defence such as it was I submit to the court that it was absolutely untrue. Accordingly it is my opinion the court can reach only one decision in this case because surely mere chance has played too big a part in these events.

Lieut. V.M. Singer having been duly sworn States:
I am Lieut. V.M. Singer and I hereby submit .
The Prosecuting Officer Submits to the court

1. Expense Voucher for £3.6.5.
2. Expense Voucher For £0.11.11.
3. AFB.252
4. B.D. Blouse
5. Certificate of arrest
6. Diagram of Building
7. AFB.296 statement of character and record of service
8. MFM6 Field Conduct Sheet.

These are read marked by the President and attached to the proceedings as exhibits "A" "B" "C" "D" "E" "F" "G" "H" respectively.

In the opinion of the Court it is unnecessary to comply with R.P.83(3)

DEFENCE

STATEMENT IN MITIGATION OF PUNISHMENT BY THE ACCUSED.

The reason I went A.W.O.L. was because I was very dissatisfied in my Regt. I didn't join the R.C.D.s originally I was transferred from the Ontario Tank Regt. without my consent. I didn't like the Regt then and I would have preferred to stay in the tank Regt. I knew it would be hard to transfer back so I decided to stay and try to get to like the Regt. and the work I was doing. I first worked as a Qualified Driver Operator and then as a Driver Mechanic. I worked at both trades and I still didn't seem to get along the way I would have liked to in the Regt.

About three months ago I applied for a transfer and again 1 months ago . Both times my requests were denied on the grounds that I was too well qualified. I asked to be treansferred to the Ontario Tank Regt if possible and if not to any other Rget. that was in action in Sicily at the time.

On the night that I went A.W.O.L. I had not intended to do so but I went out with permission of the Guard Commander and stayed longer than I had figured on staying.

I started back and found that I was already late for Guard and I knew I would get into trouble over it and being already dissatisfied with the Regt I decided to go A.W.O.L..

I am married and would not like to get a sentence which would mean that my wife's allowance would be stopped.

In the opinion of the Court it is unnecessary to comply with R.P.83(8)

Lieut-Col W.B. Ives
President

Exhibit A (A).

Expense Voucher Re—: Ref. K.R. & O. (Can) 539

Reg. No. B61378 Rank Pte Name Ryan, W Unit 1 Armd Car Regt

The following expenses were incurred in apprehending and returning the M.P. Soldier to ~~his Unit From~~ London from Preston

Date	Particulars	Amount		
6 Sept 42	Escorts return fare from LONDON To Preston	1	12	2
	Prisoners single fare to LONDON From Preston		16	1
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares		18	2
	Total £	2	6	5

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000-55
40(P & R/483(3287)

Exhibit R Cdn

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. B61398 Rank Spr. Name Ryan, W. Unit 1 Cdn. Armd Car Regt.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount		
6 Sept 43	Escorts return fare from LONDON To Brighton		7	11
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Brighton		4	0
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		11	11

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/53
40(P & R/48(53287)

CHARGE.

Army Form B 252
(See King's Regulations)

A. C. R.
Regiment

1st CANADIAN CORPS
Battery / Squadron / Troop or Company

CHARGE against No. R/61898 Rank PTE

Name RYAN, W. J. P.

Place Date of Offence

OFFENCE WHILST ON ACTIVE SERVICE ABSENT FROM UNIT WITHOUT BEING ARRESTED BY THE MILITARY POLICE IN THE KING GEORGE V R.S.A. MANCHESTER ON THE 28TH AUGUST 1943 AT ABOUT 0700 HRS

Names of Witnesses:—

7688708 L/CPL G. PHEAN C.M. POLICE

788494 L/CPL V. GREENSLADE C.M. POLICE

Signature of O.C. Battery, Squadron, Troop or Company: [signature] Capt.

Punishment Awarded: for A.P.M. Lancs. & Border District

By whom Awarded:

Adjutant.

P.T.O.

20123. W.L.W.(A.T.)/969. 2,000,000. 5/42. K. & H., Ltd. G.667/47.

FILE NO. R.C.P. 5-5-3
REG. NO. 1794

STATEMENT OF **EVIDENCE** IN CASE OF
NO. B/41398 PTE RYAN. W. J. P.
1st A.C.R. R.C.D REGT.
CANADIAN FORCES OVERSEAS.

Sir,

At MANCHESTER on the 23rd AUGUST 1943 at about 0700 hours. I was on duty in the Kings GEORGE. Y.M.C.A. accompanied by Mr. GREENSLADE. C.M. POLICE. when I saw the above named soldier.

I asked him if he was on leave and he replied, No. Corporal, I am absent. I arrested and escorted him to the ARDWICK GREEN DRILL HALL. where I handed him over to the R.C.O.C. GUARD to be detained. He was sober and wearing Military Uniform.

MANCHESTER
23. 8. 43

G. Thomas sgt
C. M. POLICE

REMARKS

Sir.

I have read over and corroborate the above statement.

MANCHESTER
23.8.43

W. Greenslade Sgt
C. M. POLICE

Exhibit 'E' 60

CERTIFICATE TO ACCOMPANY WITH NON ARMY ACT SECTION 103 (1) (a).

I certify that No. [redacted] Rank Private Name [redacted]
King George V.R.A.,

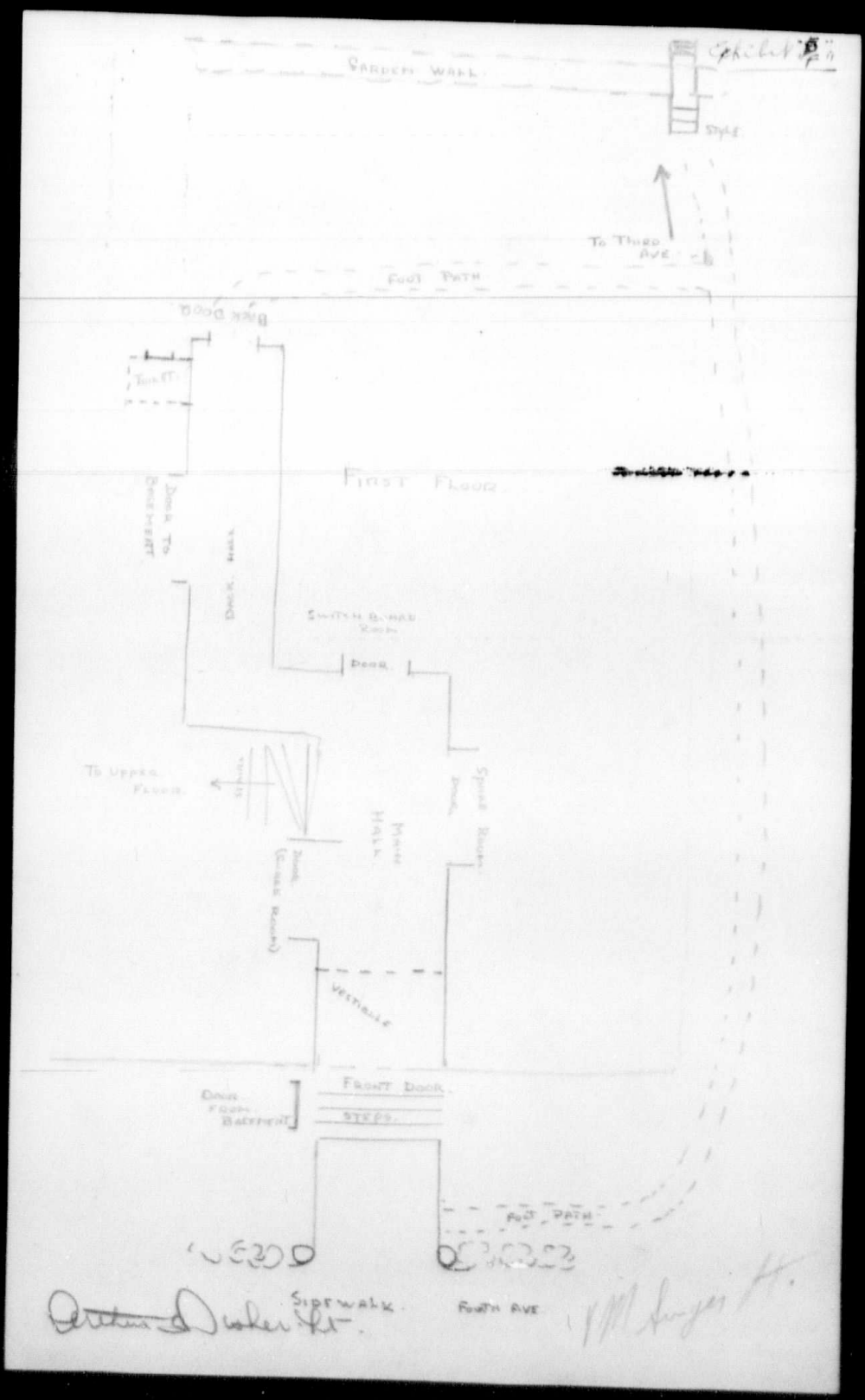
of [redacted] Regiment/Battalion/Corps [redacted] unit, was arrested at [redacted]

at [redacted] hours, on the [redacted] day of [redacted] 194[redacted]

Signature of Provost Marshal, A.P.M., or other officer into whose custody the above named person was taken on arrest.

Forth Headquarters Staff
Corps of Military Police,
164 H.Q. Provost Company,
Lancashire and Border
District.

Into [redacted] Area.


Garden Wall
Style
To Third Ave
Foot Path
Back Door
Toilet
First Floor
Door to Basement
Back Hall
Switch Board Room
Door
To Upper Floor
Stairs
Main Hall
Spare Room
Vestibule
Front Door
Door from Basement
Steps
Foot Path
Sidewalk
Fourth Ave

SUMMARY OF EVIDENCE

in the case of

B 61398 Tpr Ryan W J P, 1 Armd C Regt (RCD), 1 Cdn Corps, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS for the Prosecution

B-61325 Tpr Lince G R, 1 Armd C Regt (RCD), having been duly sworn states:

" I am B 61325 Tpr Lince G R, "D" Sqn, 1 Armd C Regt (RCD). On the night of the 17-18 August 1943 I was on Regimental Guard duty stationed outside the Guard Room. At approximately 0100 hrs that night B 61398 Tpr Ryan W J P, the accused came up to the Guard Room and asked me if he could be permitted to go upstairs and speak to L/Cpl Snyder one of the Regimental Provost, who was sleeping upstairs. I said yes. Ryan went into the building and stopped in front of the Guard Room door. At this time I saw a figure coming up Fourth Avenue towards the Guard Room building, keeping in close to the hedge. He stopped behind the pillar, which is in front of the Guard Room building. A few moments later he came up to me. It was Tpr Brown R W. He asked if he could enter the Guard Room building in order to use the toilet. I said yes. I followed Brown into the building and took up a position in front of the room where the Regimental switchboard is. From this position I could observe the door over the stairway leading down to the rooms where the prisoners are kept. At this time this door was barred. The bar and fixtures for it are of such a nature that the bar can only be removed from the side on which the bar is situated. The bar was so fixed that it was unlikely that it could fall by itself, and to remove it would require some physical action. Ryan went upstairs and Brown went through to the back of the building where the toilet is situated. In a few moments Ryan came downstairs and said, "He's asleep", referring, I imagine, to L/Cpl Snyder. At approximately the same time Brown came out to the front of the building from where he had been. Together Brown and Ryan walked to the front door and I followed them. They then went down to the sidewalk and out to the street. They stopped there and asked me if it was alright if they went around the Regimental Guard Building and through the backyard into the next street. I said yes. Ryan and Brown then went around the building towards the rear. Approximately ten or fifteen minutes later I heard the back door banging and I went through to the back of the building and closed it. Coming back to the front of the building I noticed that the bar on the door, leading down to the cells, had been taken down and the door now stood slightly open. I replaced the bar and reported this to the Guard Commander. The Guard Commander came and conducted certain investigations. From the time that I saw the bar on the door, at approximately 0105 hours, until I later noticed that it had been removed no one had entered the Guard Room Building to the best of my knowledge. The back door to the Guard Room Building provides access to the building and can be entered from the back yard.

G R Lince

FIRST WITNESS (cont'd) for the Prosecution

Cross-examined by the accused:

Q 1. When Brown and I left the Guard Room Building was the bar on the door leading down to the cells on?

A 1. Yes it was.

Q 2. Were the cells downstairs locked?

A 2. No.

J K Lance
Signature - First Witness Prosecution

SECOND WITNESS for the Prosecution

P 1675 A/Sgt Rescorl P, 1 Armd C Regt (RCD), having been duly sworn, state:

" I am P-1675 A/Sgt Rescorl P, "D" Sqn, 1 Armd C Regt (RCD). On the night of the 17-18 August 1943 I was acting as Regimental Guard Commander. Amongst the prisoners in the Guard Room when I took over was one Tpr MacKay S E. The last time I inspected the prisoners was 2245 hrs that evening, at which time they were all present and correct. At approximately 0120 hrs that night, as a result of certain information I received, I went down to the cells to inspect the prisoners and I discovered that Tpr MacKay S E had escaped."

The accused declines to cross-examine the witness.

P Rescorl
Signature - Second Witness Prosecution.

THIRD WITNESS for the Prosecution

B 138 Cpl Burgess I D, "B" Sqn, 1 Armd C Regt (RCD), having been duly sworn, state:

" I am B 138 Cpl Burgess I D, "B" Sqn, 1 Armd C Regt (RCD). On the night of the 17-18 August 1943 I was Guard Commander of "B" Sqn Guard. One of the members of this Guard was Tpr Ryan W J P, the accused. At 1800 hrs I gave out my orders for the guard. At this time I told Tpr Ryan that he was to be on guard at 2300 hrs. At approximately 1830 hrs Ryan came to me and asked if he could have permission to go to the canteen. I granted this permission to go. This permission to go to the canteen is usually granted to members of the guard whilst they are standing by to go on duty. At 2300 hrs Ryan did not show up to take over his post and I replaced him with another man. I did not see Ryan again for the balance of that evening and at 0600 hrs the next morning I reported his absence to the Orderly Corporal.

The accused declines to cross-examine the witness.

I D Burgess
Signature - Third Witness Prosecution

FOURTH WITNESS for the Prosecution

L 53866 L/Cpl Snyder R A, HQ Sqn, 1 Armd C Regt (RCD), having been duly sworn states:

" I am L 53866 L/Cpl Snyder R A, H Q Sqn, 1 Armd C Regt (RCD). On the 6 September 1943 whilst acting as a Regimental Provost I went to Brighton Station and there took over B 61398 Tpr Ryan W J P, the accused, from an escort from No 6 Provost Company. At this time I was given certain documents amongst which were Expense Vouchers re apprehension and return of the accused from Preston to Brighton via London, (Exhibits 'A' and 'B'), and Certificate in Accordance with the Army Act Section 163 (1) (jj) (Exhibit 'E'). The accused is the person referred to in these documents."

The accused declines to cross-examine the witness.

R A Snyder
Signature - Fourth Witness
Prosecution

"The Expense Voucher Forms (CMHQ 1000:55) and Certificate in Accordance with the Army Act Section 163 (1) (jj) referred to by the witness, produced, read over to the accused, marked respectively Exhibits 'A', 'B' and 'E', signed by me and attached hereto."

W. M. Langley Lt
Signature of Officer Taking
Summary

FIFTH WITNESS for the Prosecution

B 61862 Tpr Upsdell J A, HQ Sqn, 1 Armd C Regt (RCD), having been duly sworn, states:

" I am B 61862 Tpr Upsdell J A, HQ Sqn, 1 Armd C Regt (RCD). On the 10 September 1943 I was employed in the Regimental Orderly Room as a clerk. Amongst the mail that I opened that day were certain documents including Army Form B 252. (Exhibit 'C') The accused is the person referred to in this document."

The accused declines to cross-examine the witness.

J A Upsdell
Signature of Fifth Witness
Prosecution

"The Charge Sheet (AFB252) referred to by the witness, produced, read over to the accused, marked Exhibit 'C', signed by me and attached hereto."

W. M. Langley Lt
Signature of Officer Taking
Summary

SIXTH WITNESS for the Prosecution

B 74656 Tpr Bell J C, Regimental Provost, 1st Armoured Car Regiment (RCD), having been duly sworn, states:-

" I am B 74656 Tpr Bell J C, Regimental Provost, 1st Armoured Car Regiment (RCD). On the night of 17 August 1943 amongst the prisoners in the Guard Room was one C 51504 Tpr MacKay S E. Two or three days previous to that day I took a uniform of Tpr MacKay's to a cleaner. MacKay had no other uniform amongst his kit, at that time. All he had was a pair of coveralls. His kit on the 17 August 1943 was the same as on the previous day. When MacKay escaped sometime on the night of 17-18 August 1943 he did not have in his possession any uniform of his own. All he had was his coveralls."

The accused declines to cross-examine the witness.

J C Bell
Signature - Sixth Witness Prosecution

SEVENTH WITNESS for the Prosecution

L 54619 Sgt Zaverganietz W, Regimental Provost Sergeant, 1st Armoured Car Regiment (RCD), having been duly sworn, states:-

" I am L 54619 Sgt Zaverganietz W, Regimental Provost Sergeant, 1st Armoured Car Regiment (RCD). When, on the 11 September 1943, Tpr MacKay S E was returned to the Regimental Guard Room he was properly dressed. He was wearing a suit of battle-dress. He was wearing this tunic, (Exhibit 'D') which has written inside it the number B 61398, the accused's Regimental number. After discovering this I asked the accused if this was his tunic and he said yes it was. I asked him how MacKay had got hold of it and he said that he had given it to MacKay on the night of MacKay's escape sometime between the hours of 0200 and 0300 on the 18 August 1943."

The accused declines to cross-examine the witness.

W Zaverganietz
Signature - Seventh Witness Prosecution

"The battle-dress tunic referred to by the witness produced, marked Exhibit 'D', signed by me and attached hereto."

A W Mungall Lt
Signature of Officer Taking Summary.

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given as evidence.

After the above caution the accused declined to give evidence.

The accused does not call any witness for the defence.

I certify that the foregoing Summary of Evidence consisting of five (5) pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (C), (D), (E) and (F) have been complied with.

Officer detailed to take
Summary of Evidence

In the Field
16 Sep 43

No. B 613866 Name RYAN W J P Sgn. ~~BRRR~~ XXXXXXX 'B' Corps C A C Date of enlistment 29-4-41 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character Major H I T McLeod

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of entry (where any with effect)	By whom awarded	Remarks
				Sheet destroyed 29-10-41	Major H I T McLeod				
On board H M T E 354	16-11-41	Tpr	-	A A Sec 40: Failing to comply with an order.	Sgt Morgan Cpl Wambolt Cpl Howell	96 hrs detn	17-11-41	Major R R Munro	
In the Field	2-11-42	Tpr	-	A A Sec 15 (1) A W L 5 hours	Cpl Coney Sgt Gray	5 C B	2-11-42	Major H I T McLeod	
In the Field	12-2-43	Tpr	-	A A Sec 15 (1) A W L from 2215 hrs 12 Feb 43 until 0015 hrs 13 Feb 43 (Absent 2 hrs)	L/Cpl O A Rice (RP) Cpl Miller J J (RP)	3 days F P	16-2-43	LtCol A T Paterson	Forfeits 7 days pay under PR&I 149 (2)
In the Field	15-6-43	Tpr	-	A A Sec 15 (1) A W L from morning parade for 5 minutes.	Sgt Malone J E	3 days C B	15-6-43	Major H I T McLeod	

(P.T.O.)

Place	Date of offence	Rank	Corps of Arrest-ation	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	1-7-43	Tpr	-	A A Sec 4C Conduct to the prejudice in that he drove W D veh S/C CF61868 from Sqn park without permission. A A 6 (2)c Forcing a sentinel in that he refused to halt when ordered by Car park guard.	L/Cpl Reitmeier Tpr Arsenault Tpr Payne	24 days F P	2-7-43	Lt Col J F Bingham	Forfeits 24 days pay

Certified true copy:

(R B Tackaberry) Capt
Adjt 1 Armd C Regt (RCD)

Exhibit 'G' RCD

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

B 61398 Tpr Ryan W J P OF THE 1 Armd C Regt (RCD)

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Troop, Battery or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or Civil Court, and of cases in which trial has been dispensed with.

Note. If the charge is for drunkenness, the entries for drunkenness must be stated separately.

	Within last 12 months	Since enlistment
For A A Sec 15 (1)	three (3) times	times
For A A Sec 40	two (2) times	times
For A A Sec 6 (2)	one (1) times	times
For	times	times

Number of instances of gallantry or distinguished conduct

N/A

~~XX~~

~~XXXX

~~12. The accused holds in the army (air force) the (honorary) rank of~~ .....

dated ....., and in his regiment (or corps or department), the rank

of ....., dated .....

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ....., ... years

In the rank of ....., ... years

~~In the rank of ....., ... years~~

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

The above statement (with the schedule of convictions) is read, is marked .....

signed by the president, and annexed to the proceedings.

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT, OF ACCUSED

RANK, NAME AND REGIMENTAL NUMBER .....

of the .....

NOTE:—A verbatim extract from the regimental books stating the convictions, must be inserted.

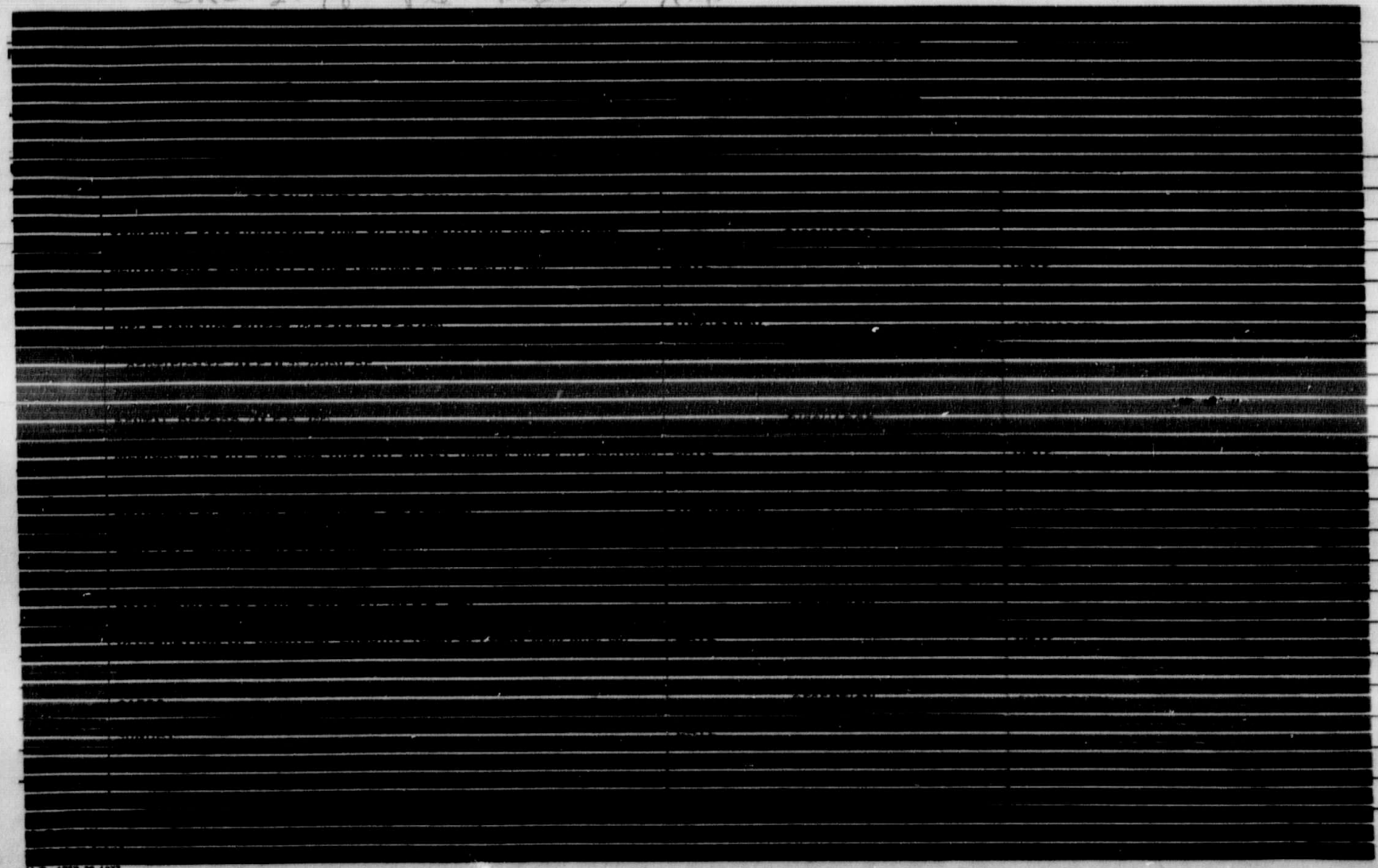
Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing Schedule of convictions is a true extract from the regimental books in my custody.

Signed this 16th day of September 1943. R B Tacksberry

(R B Tacksberry) Capt
Adjt
1 Armd C Regt (RCD)

CAO-2-98 Pto. Rugosa, H.A.



H.O. 1772-38-1377

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B.15031 Pte Harry Arthur RYERSE - 1 Cdn Repat Depot

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 6 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of nine (9) months.

(Sgd) ..... 28 OCT 46 (Sgd) C H Tuttle Maj

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.) A1 Cdn

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further order.(1)~~

(1. AA 57A. Delete if not used.)

(Sgd) H B K Gordon Lt Col

Date 24 Oct 46 Commanding 1 Cdn Repat Depot

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B.15031 Pte Ryerse, H.A.	24 Oct 46	[signature] Lt Col

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160, CAO 2-92

RECEIVED OCT 28 1946 CMHQ

FIELD GENERAL COURT-MARTIAL

CFAA6 (In lieu of AFAA) 40-P & R/1608 (6144) 4/38B

Convened by Order of Colonel M B K GORDON Comd 1 Cdn Repat Depot dated 22 Oct 46.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B.15031		Pte	Harry Arthur	RYERSE	1 Cdn Repat Depot

PROCEEDINGS REVIEWED

28 Oct 46 C H Tuttle Maj

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 28 Oct 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RoA. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1045 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to the~~ ~~as interpreter~~? Ans .....

~~The Interpreter is sworn.~~(1) Do you object to MAJOR D E JONES as the shorthand writer? Ans No.

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

4 Incr (A)

President	Lt-Col	C E WOODROW OBE ED	1 Cdn Repat Depot
Member	Capt	J E P MARON	1 Cdn Repat Depot
Member	Lt	V S FARQUHAR	1 Cdn Repat Depot
~~Judge-Advocate~~			
Prosecutor	MAJOR	D E JONES	1 CDN REPAT DEPOT
Defending Offr	CAPT	W N FERGUSON	1 CDN REPAT DEPOT

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment make(s) (no) (a) plea .....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 22, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 13

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*b*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-86; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*F*) *fn* 1; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused: Do you wish to make a statement? Ans. Do not wish to.[5]
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.[1] The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s).~~ The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ~~A~~, initialled and read aloud by the President.[1]
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(*1. RP 37(A) (2).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here. Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....[1]
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.[1]
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.[1]
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans..... Do you intend to call witnesses on your behalf? Ans..... Are they witnesses as to character only? Ans.....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.[1]
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(*1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?[1]
Ans. No wish.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy (~~copies~~) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ~~B~~ and Ex ~~C~~ respectively.[3]
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?[1] Ans. Repeating effect of plea in mitigation already made.
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(*1. AA 54(c), RP 120(A).*)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.[2]
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused, B150351 Pte. Harry Arthur RYERSE, RCASC, on the strength of No 1 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE — WHEN ON ACTIVE SERVICE

SECTION 15 (1) — ABSENTING HIMSELF WITHOUT LEAVE

ARMY ACT — In that he,

in the field, absented himself without leave from 2359 hrs 13 JAN 46 until being apprehended by the Civil Police in London at 1930 hrs 31 JUL 46.

ABSENT: 196 days, 19 hours, 31 minutes.

(B M MACINTYRE) Lt-Col.,
Officer Commanding,
No 1 Wing,
No 1 Cdn Repat Depot,
Canadian Army Overseas.

Field

21 OCT 46

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

Field

22 Oct 46

(M.B.K. Gordon) Col
Commanding Officer
#1 Cdn Repat Depot

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
B.15031	Pte	Harry Arthur	RYERSE	1 Cdn Repat Depot

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 22 Oct 46 endorsed by me, (~~or by my order~~) "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I have appointed as Judge Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Col	C E WOODROW CBE ED	4 Incr (A) 1 Cdn Repat Depot

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by CO	1 Cdn Repat Depot
Lt	to be detailed by CO	1 Cdn Repat Depot

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 109.)	(Unit.)
~~(Rank.)~~		

JUDGE ADVOCATE.

(Rank.)	(Must be named, if any. RP 108.)	(Unit.)
~~(Rank.)~~		

On Active Service in the Fd

in England (Country.)

Date 22 Oct 46

M B K Gordon (Signed personally. RP 105 fn 2.)
(M.B.K. Gordon)

Colonel (Rank.)

Commanding Officer - 1 Cdn Repat Depot
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 98 (In lieu of AFA 3) 40/P & S/1697 (6143)

(See overleaf for oaths and notes for use on trial.)

Odb

MEDICAL OFFICER's REPORT

(AR (Can) 567)

This is to certify that I have this morning medically examined

No B152831 Pte. DYERSE, H.A.

and that in my opinion he is ~~unfit~~ fit "M.F." 24/10/46

to undergo trial by Court-Martial.

Station TWEEDSMUIR CAMP.

Date OCT. 28-46.

H.S. MacDonald Capt

RCAMC
Medical Officer
"1" Wing #1 Cdn Repat Depot

Note: (All deletions and alterations will be initialled by the M.O.)

Exhibit "J"

SUMMARY OF EVIDENCE

In the case of,

B15031 Pte. Harry Arthur RYZEWSE, on the strength of No 1 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas.

"I produce the following documents, pursuant to Overseas Routine Order No 6352, which have been read over and shown to the Accused, and which are attached hereto as Exhibits."

(1) Certified True Copy of a Declaration of a Court of Inquiry which declares that B15031 Pte. RYZEWSE, H.A., absented Himself from No 4 (Gen Hft) Wing, No 1 Canadian Repatriation Depot at 2359 hrs 13 JAN 46.
(Marked Exhibit "A")

(2) Certificate in Accordance with Section 163 (1) (m) of the Army Act signed by Officer in charge of Carter Street Police Station signed on the 2nd August 1946, which declares that B15031 Pte. RYZEWSE, Harry, Arthur, was arrested at Kennington Park, London at 1930 hrs 31 JUL 46.
(Marked Exhibit "B")

F. G. Rivers
(F G RIVERS) Lieut, RCAC
Officer detailed to take the Summary of Evidence.

THE ACCUSED WAS CAUTIONED AS FOLLOWS:

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The Accused reserves his defence.

The Accused does not call any witnesses.

"I certify that the above Summary of Evidence, consisting of one (1) page was taken down by me in the presence and hearing of the Accused, and Rules of Procedure 4 (c) (d) (e) and (f) have been complied with."

F. G. Rivers
(F G RIVERS) Lieut, RCAC.
Officer detailed to take the Summary of Evidence.

Signed in the Field

This 21 day of Oct 46.

THE CASE OF B15031 Pte. Harry Arthur RYERSE

(i) LIST OF WITNESSES FOR PROSECUTION

Nil

(ii) LIST OF WITNESSES FOR DEFENCE

Nil

(iii) LIST OF EXHIBITS FOR PROSECUTION

(a) Cert True Copy of a Declaration of a Court of Inquiry held on 12 March concerning the absence without leave of B15031 Pte. Harry Arthur RYERSE. (Marked Exhibit "A")

(b) Cert in Accordance with Section 163 (1) (m) of the Army Act concerning the arrest of B15031 Pte. Harry Arthur RYERSE. (Marked Exhibit "B")

(iv) LIST OF EXHIBITS FOR DEFENCE

Nil

(v) RECEIPT BY ACCUSED FOR COPY OF CHARGE SHEET AND SUMMARY OF EVIDENCE.

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence, taken in the Field, preliminary to my Court Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court Martial.

H. A. Ryerse
(B15031 Pte Ryerse, H.A.)

(vi) APPLICATION BY ACCUSED FOR DEFENDING OFFICER

I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of ~~H. A. Ryerse~~ if he is available.

H. A. Ryerse
(B15031 Pte Ryerse, H.A.)

Signed in the Field

This 21 day of Oct 40

EXHIBIT 'A'

RECORD of the Declaration of a Court of Inquiry assembled at No 4 (Gen Rft) Wing No 1 Cdn Repat Depot on the 12 day of March 19 46 for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B.15031 Pte. Ryerse H.A.

DECLARATION

The Court declare that No. B.15031 Pte. Ryerse H.A.
No 4 (Gen Rft) Wing NO 1 Cdn Repat Depot
illegally absented himself without leave No 4 (Gen Rft) Wing No 1 C.R.D.
at 2359 hrs on the 13 day of Jan 46,
that he is still so absent, and that on the 12 March 46 he was deficient, and
that he is still deficient of the following articles :—

ARTICLES	VALUE	ARTICLES	VALUE

Capt G.L. Larose CIC President
No4(Gen Rft) Wing No 1 C.R.D.

Lt. K.L. Miller R.C.A. Member

Member

Signed at Bramshott

this 19 day of March 19 46

Signature of Commanding Officer W.O. STOCKDALE

Certified true copy C.E. Innis
Signature of Officer having custody of original record
(C.E. INNIS) Lt. R.C.A.
Legal Officer
No 4 (Gen Rft) Wing
No 1 Cdn Repat Depot

3.60B [illegible] AFB 375–AFB 115 60.P&S.392 (8703)

APPENDIX "B"

D 15031 Pte HYSHSE H A

Deficiencies in the kit of.....

	100%			75%		
	£	s	d	£	s	d
Anklets web, prs					3	4
Blouses battle dress				1	16	2
Boots ankle, prs				1	16	8
Beret with badge					4	2
Drawers Coll short, prs					2	10
Gloves woollen, prs					1	6
Greatcoat				1	18	9
Jackets, sweater					6	0
Overalls, combination					8	5
Shirts, angola, drab					15	6
Shoes, canvas, prs					5	0
Socks, prs					4	0
Trousers, battle dress				2	5	10
Bags, kit					5	0
Braces, prs					1	0½
Brass, cleaning						18
Brushes, button, brass						10
" clothes					1	7
" hair					1	3
" shaving						11½
" shoe/oil/blue						4½
" tooth						12
Combs, hair						5
Fork, table						7½
Holdall					1	0
Housewife, comp					2	10
Knife, clasp						6
Knife, table						3½
Razor, safety						8
Spoon, t.s.					2	8
Towels, hand						6
Attachments, straps					2	9½
Belt, waist						3
Bottle, water					1	3
Brushes, R & L						2
Carriers, water bottle						2
Haversack						2
Packs						10½
Straps, shoulder, L & R					1	0½
Straps, web suspender						7½
Tins, mess					9	6
Tins, stick						6½
Tea cape						
Mug, drinking						
	£	7	8½	£13	1	5½

EXHIBIT B

Carter Street Police Station
'L' Division.
2nd. August 1946.

CERTIFICATE IN ACCORDANCE WITH SECTION 183 (1)(m) OF THE ARMY ACT.

I certify that the person whose description is given below was arrested at Kennington Park, S.E.11, at 7-30p.m. on the 31st July 1946 and he was then wearing uniform.

Regimental particulars of soldier referred to above.

Description.

No.	B.15031.
Rank.	Private.
Name.	RYERSE Harry Arthur
Unit.	2nd Batt. Cameron Highlanders of Ottawa
Age.	26.
Height.	5' 11"
Comp.	Dark.
Hair.	Black.
Eyes.	Hazel.
Marks.	//

Signature of officer of Police Station where the above named person was taken on arrest.

.....P.S.
In charge of Carter St Police Stn. 'L' Div.

Plea received, 1945
Ptd

PLEA IN MITIGATION

IN THE CASE OF

B.15031 Pte RYERSE, H.A. --- 1 Cdn Repat Depot

BY THE DEFENDING OFFICER

Pte Ryerse as you have said enlisted in 1940, overseas in 42 and has served in the army somewhat over six years. Has been in action and has the usual record of an army man and he has done his duty for Canada or should I put it that any man who has actually seen action is deserving of a certain amount of consideration.

Last spring, last January when Ryerse was waiting to be repatted to Canada his wife is in the position where she had no accomodation and he was on the point of being sent to Canada and he is in the position of being sent away and not being able to do anything about it and she has changed her mind and does not want to go to Canada. He has taken leave wrongly admittedly, he pleaded guilty to it. He knows he shouldn't do this. Should a man go and leave his wife in the street, should he go before having a chance to talk to her, persuade her to go to Canada. The man has not went away with the intention of staying away . If the report is checked up you will find the man was in uniform when picked up, admittedly he didn't surrender himself. A man keeps going from day to day, knowing that his previous AWL's were he knew he would be Court Martialled. The man is afraid of it. May I suggest to this Court a man with his record, you will pay attention to his MFM 6 where his previous convictions of AWL and been punished by Court Martial. He will have to be punished for this but rather than a severe punishment I suggest that this man should be put where he could have some sort of direction of character, somebody that could form him so that he would realize the sense of responsibility. He has been convicted several times, done punishment in detention which has done him no good, they do nothing except drill him and as the actual word, punishment. There has been no effort at giving the man a sense of responsibility or anything else, there has been straight punishment, punishment, punishment. As far as the army is concerned he has had no other crime and I am suggesting to the Court taking into consideration the fact that he was in action and any man that has been shot at has done his bit for Canada he has given to Canada a lot because he has taken a chance of putting his life up against a country. I am asking the Court in their punishment not to disgrace this man, give him a chance where he can go to some place in Canada, possibly back with his folks where he will possibly be able to take direction from them and make a living. If the man is disgraced and sent home to Canada and the people of his neighborhood and employers know he has been disgraced and dishonorably discharged he his behind the "8 ball" for years to come. The man can't possibly go ahead and make an honest reasonable living or anything like that. Take and put it in your own case, if you had to go back to people you know and had to live with them and asked somebody for a job and had to show that to them what would you get, nothing. So in the view of these things as I said before he has to be punished, make the punishment such that when he is sent back to Canada and possibly goes back to his neighbors and folks of his own who will be able to give the man a sense of responsibility again and take up his duties as a citizen . His maximum fault in the army his crime have been AWL. He has done wrong, he has served honorably in action and I say again I ask you that you give him and allow him to go back to his position as an honorable citizen.

Exhibit "B"

ARMY FORM B.296

Statement as to Character and Particulars of Service of Accused.

Number	Rank	Name	Regiment (or as the case may be)
B[illegible]5031	Pte	RYERSE, H.A.	Nol Cdn Repat Depot

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the [illegible] entries [illegible] sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION. — If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months	* Since Enlistment
For	AA Sec 15 (1) times	8 times
For	times	times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct.

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, or

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for [illegible] beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges, for one days in civil custody, and 6 days in military custody, making a total of 6 days, of which nil days were spent in hospital.

5. The present age of the accused according to his record of service is 30 yrs 2 mos.

6. The date of his attestation specified in his record of service is 19 Jul 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

8. The accused is entitled to [illegible] or gratuity in respect of

9. The accused is allowed to reckon service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of, or entitled to (*state any military decoration or reward*). CVSM & Clasp, France & Germany Star, Defence Medal, War Medal.

11. (*If the accused is a warrant officer.*) The accused has been duly made a warrant officer [illegible] of

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated and in his regiment (*or corps or department*) the rank of dated

W.S.35031/1519 20M. 5/40. P. Ltd. T51-3.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B15031 Rank Pte Name HYERSE, H.A. of 1 C.R.D. Regiment (or as the case may be)

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
Civil Court	30 July 43	Civil Offence	6 mos Impr. with H.L.	
F.G.C.M.	5 Jan 44	A.A. Sec 15 (1)	6 months detention	6 May 44 60 days
F.G.C.M.	25 Oct 44	A.A. Sec 15 (1)	1 yrs detn. "	ent Susp. 3/1/45 Remit 30/10/45
Civil Court	15 Aug 46	Civil Offence.	3 mos Impr with H.L.	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 29 day of October, 1946.

(F.G. Rivers) Lieut, RCAC

13. [illegible] pursued has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of [illegible] Date of Promotion

In the rank of [illegible]

In the rank of [illegible]

(INSTRUCTION—If any matter in any of the above paragraphs cannot be found from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be obtained from such courts as are available and the paragraph completed accordingly.)

Reg'tal "C" Coy

No. B15031 Name RYERSE, H.A. Sqn, Battery, or Company — Corps RCASC — Date of enlistment 19 Jul 40 — Service (Proficiency Pay)

3/17 MFM 6 (APB 122) 40/PAS/130 (7508)

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 1 — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dismissing with trial	By whom awarded	Remarks
Field	22Jun 42	Gnr.		AA SEC 15 (1)		7 days CB	29-6-42		
"	18Oct 42	"		AA Sec 15 (1)		7 days CB	20-10-42		
"	29Nov 42	"		AA Sec 15 (1)		7 days pay	2-12-42		
"	12 Dec 42	"		AA Sec 15 (1)		8 days CB	15-12-42		
"	19Jan 42	"		AA Sec 15 (1) (2 charges)		14 days FP	9-2-43		
"	17 Mar 43	"		AA Sec 15 (1)		14 days CB	20-3-43		

(F193)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	30Jul 43	Gnr		Civil Charge		6 mos impr with H.L. 6 mos detn	30-7-43		
"	25May 43	Pte		AA Sec 15 (1)		1 yr Detn	5-1-44	F.G.C.M.	
"	8May 44	"		AA Sec 15 (1)		9 days pay	25-10-44	F.G.C.M.	
"	15 Jan 45	"		AA Sec 15 (1)		3 mos imprt	18-1-45		
"	31Jul 46	"		Indecent Assault.			15-8-46	Civil Court	

CERTIFIED TRUE EXTRACT FROM ORIGINAL MBM 4 HELD IN MY POSSESSION

23 Oct 46

(F G Rivers) Lieut RCAC
Legal Office 1 Wing, 1 Cdn Repat Depot
OFFICER HAVIN CUSTODY OF ORIGINAL DOCUMENT

4C-149

PTE RYERSE HA.

716

RECORDED AT CMHQ IN AB 160.

RECEIVED 14 NOV 1944 JAG BRANCH CMHQ

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig A.B. Connelly Comd "B" Gp CRU dated 22 Oct 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. ~~(b) Appmt, A/Lt or A/Appmt.~~	Full Christian Names.	Surname.	Unit.
B-15031	Pte	Harry Arthur	RYERSE	1 CASCRU

PROCEEDINGS REVIEWED

J. Fulignoland Capt.
19 Nov 44
REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date) 25 Oct 44.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~A.J.A. and~~ Offrs under instr, ~~if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AF5, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". ~~[illegible]~~ provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (/) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and ~~the~~ charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1130 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO(2).~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~the Interpreter~~ as interpreter ? Ans ~~The Interpreter is sworn.~~(1) Do you object to ~~The shorthand writer is sworn.~~(1) as shorthand writer ? Ans

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any,~~ and Offrs under instr, ~~if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.T. Williams	RCE	1 CERU
Member	Capt.	G.B. Bent.	R.C.E.	1 CERU.
Member	Lieut.	P.F. Pullen.	R.C.E.	1 CERU.
~~Judge Advocate~~ Prosecutor	Lieut.	W.D. Faulafer	R.C.A.S.C.	1 C.AS.C.RU.
Defending Offr	Lieut.	C.M. Cook.	R.C.A.S.C.	1 CRASCRU.

Questions by President: Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Q 2.)

A8. The accused B-15031 Pte Ryerse, H. A. before arraignment make(s) (no) plea

(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~separately~~ on the charge(s) in the charge sheet.(1) The accused does (does) not object to the charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea(s) in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A8b to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B + E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-15031 Pte Harry Arthur RYERSE 1 CASCRU

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.A.15(1)	GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

At present under sentence for NIL Days. ~~beginning on (date)~~ J.T.W. (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 9 days, of which Nil. days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: J.T.W. ~~To be shot~~ detention for a period To undergo of (1) one year.

J.T.W. (Sgd) ~~Judge Advocate, if any~~ 25 Oct 44. (Sgd) J.T. Williams Maj. President. (RP 45, 50.)

Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.(*)~~ (*) AA 57A. Delete if not used.

(Sgd) C.M. Connelly (A.B. Connelly) Brigadier.

Date 30 Oct 44 Commanding Commander "B" Group Confirming Officer. Cdn. R.A. Comd.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr
B-15031 Pte RYERSE, H.A.	1 Nov 44	(W.H. Copeland) Lt-col A/Comd No 1 Holding Wing 1 Cdn A S C Rft Unit

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Cdn. A.S.C. Reint. Unit

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court cfe see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused: Do you wish to make a statement? Ans No.[5]
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.[1]~~ The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ~~_____~~ charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ~~_____~~ charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex 'A', initialled and read aloud by the President.[1]
(*1. If there is no Summary, or if it is inadequate, comply with RP 17(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on ~~one or more of~~ the charge(s) the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making on appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....[1]
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.[1]
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.[1]
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]
(*1. Delete remainder of this para if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans .....
Do you intend to call witnesses on your behalf? Ans .....
Are they witnesses as to character only? Ans .....
(*1. RP 185. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fn 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CP A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.[1]
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?[1]
Ans No.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true ~~(copies)~~ (copies) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(i) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.[3]
(*1. MFB 353 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?[1] Ans YES. through my defending officer.[2]
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and also JA, if any.~~[2]
(*1. When several accused tried separately see RP 209. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B-15031 Private Harry Arthur RYMER, RCASC, on strength of 1 Cdn ASC Rft Unit, a soldier of the Canadian Army Overseas, is charged with, When On Active Service:-

Sec 15 (1) Army Act

ABSENTING HIMSELF WITHOUT LEAVE

in that he

IN THE FIELD, absented himself without leave from 2230 hours 8 May 1944 until 1500 hours 16 October 1944 when he surrendered himself to the S.P.S. at LONDON.
TOTAL TIME ABSENT 160 days 16 hours and 30 minutes.

(N.E. Rendell) Colonel,
Commanding
1 Cdn ASC Rft Unit

IN THE FIELD
20 OCTOBER 1944

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

23 Oct 44

(A.B. Connelly) Brig
Cond "B" Gp
Cdn Rft Units

4 C.I.U. Regt.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(b).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt	Full Christian Names.	Surname.	Unit.
R-180031	Pte	Harry Arthur	RYERSE	1 CASCRU

~~CONVENING~~ ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 25 Oct 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj Dr	J.T. Williams RCE	1 CERU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	G.B. Bent RCE	1 CIRU
Lieutenant	P.P. Pullen RCE	1 CENU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieutenant	to be detailed by	1 CSRU

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England
(Country.)

(Signed personally. RP 105 fn 2.)

Date 25 Oct 44

(A.B. Connelly) Brig (Rank.)
Comd "B" Gp CRU
Commanding
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAAS (In lieu of AFAS) 40/P & S/1697 (4031)

(See overleaf for oaths and notes for use on trial.)

T.W. Hoy Capt

APP. "A"

T.W. Hoy

Medical Officers' Certif.
K.R. (Can) para 557

I certify that I have this morning examined No: B.150321

Pte (rank) RYERSE, H.G. (name) and in my opinion he is fit to unfit

undergo trial by Court Martial.
Station: Blenheim Area
Date: 25 Oct 1944

M. Scholefield Capt
(Medical Officer)

J.T.W. Thom.

Gentlemen:

The accused, who stands before you, at the mercy of this court, is a soldier who joined early in 1942 and before any year of conscription was thought of. The accused arrived in England early in 1941 with the 5th L.A.A.R. Regt. Since arriving in England he has never received a cigarette or a gift box from his wife, who wished him into marrying her with the story that she was pregnate. After living with this woman for some time, he found out she was not pregnate and since arriving in England he has found out that she was running around with other men. This soldier had the Padre & the 5th L.A.A.R. Regt write to his wife two or three times and the Padre's letters have never been answered, at this date. Further this woman Allowance has been stopped as of last January.

After serving here in England for some time he met a girl with whom he fell in love and has given birth to a child that is his and is now expecting the second.

When he went B.W.O.R. he left with the knowledge that another baby was expected. He left with the intention of taking a civilian job to earn enough money to put this girl through her confinement. January, when this was accomplished he returned with the intentions of proceeding with his divorce against his wife in Canada and getting on a draft for overseas. Since arriving in England he has never been on a draft. This soldier requests to be put on a draft immediately, as he finds it impossible to soldier here under the circumstances.

This soldier, the accused, has been very lonely since arriving in this country, deserted by his wife he has had no news of his sisters or his only brother who is also in the Army. His mother cannot write and his father was killed in the last war. While with the 133 Bn. and from indirect sources hears that his mother is in the hospital. Being alone and deserted by those of his

family. This girl here in England, gave him love, at a time when he felt deserted by his friends. He realizes his predicament and is endeavouring to hurry up his divorce proceedings against his wife. So he may marry this girl that he loves and give his child a home.

I wish I could impress upon this Court that justice will not be served by putting this man away when he cannot be of any use to his country at a time when his services are needed. Further hindering him in his wishes to rid himself of the burden of a useless wife, so he may correct a wrong, that has caused him much worry and many sleepless nights. I plead with this Court for them to recommend, that the accused be released as soon as possible and that he be put on a draft, so he may serve his country in a useful capacity. At the same time he will be given an opportunity to clear up a mistake, that not only himself will benefit, but a girl and family. That will support as much as the accused while he is detained.

Cpl Cockburn.

Officers' Mess
A 19 C.A.S.C. T.C.
CAMP BORDEN ONTARIO

F.W. Mar.

SUMMARY OF EVIDENCE Ex "A"

IN THE CASE OF B-15031 Private Harry Arthur RYERSE, RCASC, on strength of 1 Cdn ASC Rft Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

1st WITNESS (For the Prosecution) Capt J.M. Stewart, RCASC, on strength of 1 Cdn ASC Rft Unit, having been duly sworn states:-

I am Capt J.M. Stewart, RCASC, on strength of 1 Cdn ASC Rft Unit and produce the following documents relating to the accused, whom I now recognize:-

(a) Certified True Copy of an Extract from 1 Cdn ASC Rft Unit Part II Orders Daily Order No 171 4/21 Jul 44 and certifying that B-15031 Pte Ryerse, H.A. absented himself without leave from 2230 hrs 8 May 44 (22nd day).

Marked Exhibit "A"

THE ACCUSED DECLINED TO CROSS EXAMINE THIS WITNESS

J.M. Stewart Capt
(J.M. Stewart) Capt

2nd WITNESS (For the Prosecution) U-2026 Sgt Brown, P.C., Canadian Provost Corps. Documentary.

Statement of Evidence on reverse of AFB 252

I hereby certify that in my opinion the attendance of the 2nd Witness for the Prosecution, owing to the expense and loss of time involved, is not readily procureble and a statement of evidence purporting to be signed by him has been read to the accused and is attached hereto marked Exhibit "B"

W.D. Paulafer Lt
(W.D. Paulafer) Lieut RCASC
Officer detailed to take the Summary of Evidence.

I do not require the attendance of the 2nd Witness for the prosecution for the purposes of cross examination.

H.A. Ryerse
(B-15031 Pte Ryerse, H.A.)

The accused was cautioned as follows, "Do you wish to make any statement or give evidence on oath ? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

THE ACCUSED DECLINED TO MAKE A STATEMENT OR GIVE EVIDENCE

I hereby certify that the foregoing Summary of Evidence consisting of one (1) page was taken down by me in writing in the Field on this 20th day of October 1944 in the presence and hearing of the accused and that R.P. 4 (c) (d) (e) (f) and (g) have been complied with.

W.D. Paulafer Lt
(W.D. Paulafer) Lieut RCASC
Officer detailed to take
the Summary of Evidence.

IN THE FIELD
20 OCTOBER 1944

I, the accused, B-15031 Pte Ryerse, H.A. desire the services of Lieut J. Restell, RCASC, to defend me at my forthcoming Trial by Field General Court Martial.

(B-15031 Pte Ryerse, H.A.)

H. A Ryerse

J.W.

LIST OF ENCLOSURES J.W.

(a) Certified True Copy of an Extract from 1 Cdn ASC Rft Unit Daily Orders Part II Po 171 d/21 Jul 44 and certifying that [illegible] Pte Ryerse, H.A. absented himself without leave from [illegible] hrs 6 May 1944.

(b) AFW 252 purporting to be signed by W-2028 Sgt Brown, F.C. showing the accused, B-15031 Pte Ryerse, H.A. surrendering himself to S.I.B. at London at 1500 hrs 15 Oct 44.

EXHIBIT

LAST DO NO 170
20 Jul 44

1 CDN. A.S.C. REINFORCEMENT UNIT
CANADIAN ARMY OVERSEAS
DAILY ORDERS PART II
BY
COLONEL H.P. BONNICK COMMANDING.
SECTION "B"

THIS DO NO 171
21 Jul 44

15. (b) ABSENT WITHOUT LEAVE
B.15301
Pte Ryerse, H.A.

AWL from 2230 hrs 8 May 44 (24 hrs)
AWL from 2230 hrs 8 May 44 (8th day)
AWL from 2230 hrs 8 May 44 (22nd day)
Still absent.

Certified True Copy

.....
(T.M. Justice) Lt.,
forRecords Officer
1 Cdn A.S.C. Rft Unit.

Sgd. (J.A. Whitelaw) Capt & Adjt
for (H.P. Bonnick) Colonel,
Commanding,
1 Cdn A.S.C. Rft Unit
Canadian Army Overseas

EXHIBIT

CHARGE

Army Form B 252
(See King's Regulations)

No. R.C.A.R.U. (CRU) ..... Regiment

..... { Battery / Squadron / Troop or / Company

CHARGE against No B-15051 ..... Rank Gnr. .....

Name Ryerse H. .....

Place London ..... Date of Offence 16-Oct-44

OFFENCE W.O.A.S. was A.W.L. until surrendering himself to S.I.S. London at about 1500 hrs. 16-Oct-44.

R. J. STINSON, D.A.P.M.
C.M.H.Q.

Names of Witnesses:—

Sgt. Brown F.C. S.I.S. Cdn.Provost Corps.

Signature of O.C. Battery, Squadron, Troop or Company } .....

Punishment Awarded } .....

By whom Awarded } .....

Adjutant.

P.T.O.

3 3/44 G.H.Q.F.F. 20M

Statement of B-15031 Gnr. Ryerse H. No.2.C.A.R.U. (CRU) **EVIDENCE** in the case of

Sir:-

At London at about 1500 hrs. 16-Oct-44. I was on duty at S.I.S. orderly Room when the a/m soldier surrendered himself as an absentee.

I placed him under arrest and turned him over to N.C.O. i/c of No.6.Cdn(Area) Prov.Coy. Detention Room to be detained.

London
16-Oct-44

J. Brown
.....Sgt.
(U-2028 Brown F.C.)
(S.I.S.)
Cdn.Provost Corps.

REMARKS

Statement as to Character and Particulars of Service of Accused

ARMY FORM B.296 (WAR).

(For Use at Trials by Field General Courts-Martial only)

Number.	Rank.	Name.	Regiment (or as the case may be).
[illegible]	Pte.	[illegible]	[illegible]

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence on each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For [illegible] times.

For [illegible] times.

For [illegible] times.

For [illegible] times.

Date of first entry in Field Conduct Sheet 20 Jan 42

Date of last entry in Field Conduct Sheet 8 Jan 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for [illegible] beginning on the [illegible] day of [illegible]

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 9 days in military custody, i.e., [illegible] days in open arrest, 9 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 26 years

6. The date of his attestation / calling up for military service is 20 Jan 40

7. The service which the accused is allowed to reckon is [illegible]

†State the military decorations (if any) held by accused.

8. The accused is in possession of † G.W.S.H. - 25 Jan 44

9. (If the accused is a warrant officer or N.C.O.). The accused has served continuously, without reduction, to the present date—

	Date of Promotion
In the substantive rank of N/A	
In the war substantive rank of N/A	
In the acting rank of N/A	

INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

Wt. 13475/1887 30,000 3/44 51-432 T.Ltd. Forms/B 296/War/1

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and Place of Trial	Charges upon which convicted	Sentence of the Court	Punishment remitted or sentence suspended
Petty Sessional Division of Bromley, Kent	30 Jul 1943 Bromley Kent	[illegible]	6 Months Hard Labour	
F.C.C.M.	Field 5 Jan 1944	AA Sec 15(2) ANL from 2230 hrs 25 May 44 till 1745 hrs 26 Jul 44 Abs 61 days 19 hrs 15 mins	6 Months Detn	
		Offices having custody of Regtl Books		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this ..... day of .....

3/17 MFM 6
(AFB 122)
8/CFAS/056/1418

No. B.15031 Name RYERSE. H.A. Sqn, Battery, or Company — Corps RCASC — Date of enlistment 19 Jul40 — Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet N/A — No. and date of last drunk N/A — Period not reckoning towards freedom from extra fine N/A — Sheet No 1 — Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or order directing trial with trial	By whom awarded	Remarks
									pay FR&I 149 (1)(c) Forft 10 days pay FR&I 149(1)(c (ii) Total 253 days for

CERTIFIED TRUE COPY COMPILED FROM ORIGINAL MFM 6 IN MY POSSESSION

Records Officer,
1 Cdn ASC Rft Unit,
Cdn Army Overseas.

(PTO)

No. B.15031 Name RYERSE, H.A. Sqn, Battery, or Company — Corps RCASC — Date of enlistment 19 Jul40 — Badges — Service or Proficiency Pay — 3/17 MFM 6 (AFB 122) 40/P&S/12015413

Date of last entry in Company Conduct Sheet: N/A — No. and date of last drunk: N/A — Period not reckoning towards freedom from extra fine: N/A — Sheet No 1 — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order discontinuing with trial	By whom awarded	Remarks
						7 days C.B.	29-8-42		Ffts 7 day pay FR&I 149 (2)
Field	22 Jun42	Gnr		A.A. 15(1)					
Field	18 Oct42	Gnr		A.A. 15(1) AWL from 2359 hrs 18 Oct 42 to 1200 hrs 19 Oct 42(Absent 12 hrs)	Sgt Haselton L/Bdr McDonald	7 days CB	20 Oct 42	Lt. Col A.B. Smith	Ffts. 7 days pay Ffts 1 days pay Total 8 days pay FR&I 149 (1)(a)
Field	29 Nov42	Gnr		A.A. 15(1) AWL fr. 2330 hrs 29 Nov 42 to 0930 hrs 30 Nov 42(Absent 10 hrs)	Sgt. Young D.S. Bdr. Clark W.I.		2 Dec 42	Lt. Col. A.B. Smith	Ffts 1 days pay FR&I 149(1)(a) Fft 7 days pay
Field	12 Dec 42	Gnr		A.A. 15(1) AWL fr. 2300 hrs 12 Dec 42		8 days C.B.	15 Dec 42	LtCol Hyatt	

Place	Date of offence	Rank	Unit of Regiment-ation	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or if under disposing with trial	By whom awarded	Remarks
				to 2230 hrs 13 Dec 42.					Ffts. 1 days pay
Field	19 Jan 43	Gnr		AA 15(1) AWL 1400 hrs 19 Jan 43 to 2300 hrs 20 Jan 43. Abs. 1 day 9 hrs) 2nd Charge: AA 15(1) AWL 0900 hrs 21 Jan 43 to 1430 hrs 29 Jan 43 Abs. 8 days 5 hrs 30 mins.	Documentary	14 days F.P. 14 days forf of pay	9 Feb 43	Lt Col F. Therne	J. Auto. Forf. 2 days pay. Forfs. 10 days pay Close arrest Forfs. 9 days pay. Total forf. 35 days pay.
Field	17 Mar 43	Gnr		A.A. Sec 15(1) AWL fr. 2300 hrs 17 Mar 43 to 1800 hrs 18 Mar 43 Absent 19 hrs.	Bdr. Levridge	14 days CB	20 Mar 43	Major WJ	Forfts. 1 days pay FR&I 149(1)(a)
Bromley (Kent)	30 Jul 43	Pte		Sentenced to 6 months by Petty Sessimal Division of Bromley Kent		6 months H.L. H. Down 5 May 44	30 Jul 43	Petty Sessimal Div. Bromley Kent	Forf 4 days pay in custody FR&I 149(1)(a)(c) (i) Forf. 184 days pay FR&I 149(1)(b)
Field	25 May 43	Pte		AA 15(1) AWL fr. 2230 hrs 25 May 43 until apprehended at 1745 hrs 26 Jul 43 (Abs. 61 days 19 hrs 15 mins)	Sgt O'Donnell Capt Blanchard Documentary 59	6 months Detn.	5 Jan 44	FGCM Major FB Fink	Forf. 62 days pay FR&I 149(1)(a) Forfs. 182 days

CCC-75

PTE RYERSE H.A.

PART I. PLEA(S), FINDING(S), SENTENCE.

Accused: B15031 Pte Harry Arthur RYERSE 7 Cdn LAA Regt

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Charge	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~All period under sentence (fr. _____ to _____ (date))~~ (1) RAJ

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which 10 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

~~Six Months Detention~~

(Sgd) _____ Judge-Advocate, if any. 5 Jan 44 Date awarded. (Sgd) _____ President. (See RP 45(2).) H.A. Regt.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding _____

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be sent committed to prison or detention barracks until further orders.~~ (1) RAJ

(1. AA 57A. Delete if not used.)

Date 7 Jan 44 (Sgd) D. McArgnew. Brig.

Commanding Comd 1 Cdn AA Bde

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B-15031 Pte PIERSE, HARRY ARTHUR	9 Jan 44	CAPT RCA ADJT 1 CDN LAA REGT

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CPA96 (To Dep of AFA2) 40 U.K. 8/1898 (2000)

Convened by Order of Brig D.R. Ognew Comd 1 Cdn A A Bde dated 3 Jan 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B 15031	Pte	Harry Arthur	RYERSE	7 Cdn LAA Regt.

J.K. Fequeleux, Capt. 23 Feb 44.

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS REVIEWED

29 FEB 44

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 5 Jan 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~if any, and Offrs under instr, if any~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDS. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AFS, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Instrs". For duties and powers of persons conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused directed to be tried by court-martial instead of being dealt with summarily by the CO (2).~~ RAJ

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~Prosecutor produces [illegible] the following witnesses [illegible] RAJ~~

~~The Interpreter is sworn (1). He (or she) is~~ RAJ

~~The Shorthand Writer is sworn (1). He (or she) is~~ RAJ

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 102. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 23, 71, 185, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	F. B. Zink	2 Cdn HAA Regt
Member	Capt	R. A. Butler	7 Cdn LAA Regt
Member	Lieut	J. S. Molesworth	2 Cdn LAA Regt
Judge-Advocate	—	—	—
Prosecutor	Capt	A. R. Lederman	7 Cdn LAA Regt
Defending Offr	Lieut	H. L. Morgan	7 Cdn LAA Regt

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros is lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused B15031 Pte Pierse H. A. before arraignment make(s) (no) ~~no~~ plea. (1) RAJ

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(a), 112), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. RAJ

(1. RP 26, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF ABs to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 70.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court, having considered the accused's statement,(1) The Court decides (but) (I) advise accused to withdraw his (their) plea(s) of Guilty to Not Guilty on ~~the~~ charge(s). The accused is (are) informed, and he (they) change(s) his (their) plea(s) on ~~the~~ charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. ..... (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(2) (a), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1) Ans. No
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)
(1. *MFD 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. No (2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 120. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-758. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused No. B15031, Pte Harry Arthur RYERSE, 42 Light Anti-Aircraft Battery, 7 Light Anti-Aircraft Regiment, Royal Canadian Artillery, a soldier of the Canadian Army Overseas, is charged with:-

1st Charge
Sec 15(1)
Army Act

ABSENTING HIMSELF WITHOUT LEAVE

In that he, in the field, did absent himself without leave from 2230 hrs 25 May 43 until apprehended by Metropolitan Police at Eltham Hill, S.E.9. at 1745 hrs 26 Jul 43. (Absent 61 days 19 hrs 15 mins).

Field
30 Dec 43.

.....
(H.J. Inns) Lt.-col.,
Commanding,
7 Cdn LAA Regt.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
3 Jan 44

Earl A. Olmsted
SCRA 1 CDN AA BDE
for Commander

FIELD GENERAL COURT-MARTIAL

CFA33 (To files of AFA3)
40-FAS/1607 (2003)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 67(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B/15031	Pte	Harry Arthur	RYERSE	7 Cdn LAA Regiment

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 1 JAN 44 [redacted] (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [redacted]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [redacted]
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [redacted]
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
MAJOR	F.B. ZINK		2 Cdn HAA Regt

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
CAPTAIN	R.A. BUTLER		7 Cdn LAA Regt
CAPTAIN	J.S. DINNICK		11 Cdn LAA Regt

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
LIEUT	J.S. MOLESWORTH		2 Cdn HAA Regt

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England
(Country.)

Date 3 Jan 44

(Signed personally. RP 105 fn 2.) (Rank.)
Commanding (D.R.Agnew) Brigadier
Convening Officer.
Comd 1 Cdn AA Bde

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

APPENDIX 9(2 Corps RO 24)

MEDICAL OFFICER'S CERTIFICATE

K.R. (Can) Para 557

I certify that I have this morning examined No B-15031

Gnr RYCKSE, H.A. of 7LAA Regt RCA and in my opinion he is

Fit

~~unfit~~ to undergo trial by court-martial.

Station Field

Date 5 Jan 44

J. P. Tidmuff Capt
Medical Officer
RCAMC

Any communication on this subject should quote the date and number hereon.
Postage must be prepaid.

METROPOLITAN POLICE.

No. 144A.
(Unruled)

DIVISION. Eltham. STATION

Report for the information of the A.P.M. London Area, Canadian Military Head Quarters, 2, Cockspur Street, S.W.1. 27th. July, 194 .

respecting R.15301, Rfmn, Harry Arthur, 7th. L.S.R., C.A., Brighton.

* To { S.D. Inspector. / D.D. Inspector.

CERTIFICATE IN ACCORDANCE WITH SEC. 163 (m) OF THE ARMY ACT.

I certify that the person whose description is given below was arrested at Eltham Hill, Eltham, S.E.9, in uniform, at 5-45pm. 26-7-43.

Particulars of Soldier referred to—

No. R.15301.
Rank. Private.
Name. Harry Arthur.
Unit. 7th. L.S.R., C.A. Brighton.

Description—

Age. 23.
Height. Tall.
Complexion. Sallow.
Hair. Dark brown.
Eyes. Hazel.
Marks. Has he gets a arrow- tattoo- left forearm.

Signature of officer in charge of police station where above named was brought.

G Goodbody P.S. 40
(In charge of Eltham Police S.

* Delete as necessary.

(Continue overleaf if necessary.)

This is Exhibit A referred to in the Summary of evidence in the case of B 15031 Pte Kypsie H A taken before me this 2nd day of January, 1944.

Francis Capt

No.

Forwarded by direction of the Commissioner of Police of the Metropolis, * in reply to letter of reference No.

New Scotland Yard,
London, S.W.1.

194

S.P. 23019/100,000 June 1941 w169 (2)

* Delete as necessary.

AAB/5-4-3

HQ 1 Cdn AA Bde
3 Jan 44

7 Cdn LAA Regt

FGCM - 5 Jan 44
L/13606 Gnr Sonne, A.E.
B/15031 Pte Ryerse, H.A.

MR Q 776 238

1. The m/n ORs will be tried by FGCM at 1000 hrs on 5 Jan 44 at 93 Pembroke Crescent, Brighton, by the Court detailed in 1 Cdn AA Bde Order No.592, dated 3 Jan 44.

2. The accused will be warned and the necessary steps will be taken to procure the attendance of witnesses.

K.J. Pollock Capt
for (Earl A.Olmsted) Captain,
SCRA 1 Cdn AA Bde

RIP/SN
Copy to 2 Cdn HAA Regt
(attn: Major F.B. Zink)

CONFIDENTIAL

AAB/5-4-3

HQ 1 Cdn AA Bde
3 Jan 44

2 Cdn HAA Regt

Attn: Major F.B. Zink

Field General Court Martial
B/15031 Pte. Ryerse, H.A.
7 Cdn LAA Regt

1. Herewith the u/m documents in the m/n case:

(a) Original Convening Order
(b) Original Charge Sheet
(c) Original Summary of Evidence
(d) Application by the Accused for a Defending Officer.
(e) Pro forma for recording proceedings at trial.
(f) List of exhibits

R.J. Pollock Capt
(Earl A.Olmsted)Captain
SCRA 1 Cdn AA Bde

RIP/JWRS
ENCL
D.R.LS

Statement by B 15 857 Pte Rogers, W. A. 47 Adm. Bn. Regt - having been sworn - Says: -

On 28 Mar. 43 my wife came to me at Bromley Camp & told me that she had been forced to move from her home & she asked me what we should do. It was late at night & I went with her to find a place to stay. We could not find a vacant house. I returned to billets for my blankets - we stayed in the house over night. In the morning I returned my blankets & then went with my wife to find a place. My wife was pregnant was worried as to what to do - she [illegible] me to stay with her. We found a room where we could stay with a man. I wanted to go back to the regiment but she didn't want me to. I stayed with her & worked at odd jobs until I ran short of money. My wife & I knew a girl in the area & my wife went after her for a loan of money. My wife knew her better than I did. The girl gave me $3. & I said I would repay it at the end of a week. I was not able to repay it & the Civil Police picked me up at Eltham as she laid a charge against me. I was remanded for a week so the Court could arrange for an Officer of the regiment to be able to appear for me. The Officer did not turn up and Magistrate had to defend myself. Received a sentence of 6 months hard labour in Sandhurst Gaol. Was 6 months PF for good behaviour. The Provost took me on my release & escorted me to Henrietta Street There was nothing said to indicate that I would be charged again. Understood I was free.

CANCELLED

(2) Page 2

The next day I went to 3 C.A.R.U. - stayed there for ½ a day + then moved to the Catering Corps at Farnborough. I was there for 3 weeks + while there had 1-48 hr. pass + 1-72 hr. pass.

Left on draft to the 7 L.A.A. Regt. I was with the regt. for about a week when I was put under arrest at 2200 hrs. one night. I had no idea what the charge was + was not told.

I have had no other civilian charges against me.

Questioned by Prosecution

Q - Prior to the baby born

A - Both Parents - 20 person

Q. You were surprised at the delay in the laying of the charge.

A - Yes.

Prosec - your papers did not come in to the Regt until the day of your arrest.

Q - You told the civil court that you had been A.W.L. about 2 months + the judge said he would take that into consideration when giving sentence

A - That was my feelings on the matter.

K.R. 83(4) has been complied with.

Page 2.

Field General Court Martial B15031 Pte Ryerse, Henry Arthur
5 January, 1944.

I, Rarne Hamilton Morgan, Lieut. R.C.A., Counsel for the accused, B15031 Pte Ryerse, Henry Arthur, at his Court Martial held on the 5th day of January 1944 would like to bring to the attention of the Court and such other authorities as may be concerned the following points by way of plea for mitigation of punishment:-

① The condition of ~~the~~ Ryerse's wife - pregnant, turned out of her house, ~~excitable~~, crying and begging ~~him~~ not to leave her certainly had an effect on Pte Ryerse's intended absence. This is borne out by the evidence of Pte Ryerse wherein he states that he repeatedly asked his wife to allow him to return to his unit, and also by the ~~de~~solicited letter from the Ryerse's wife to the Officer Commanding No 42 Bty, Cdn L.A.A.R.R.T., R.C.A. which was filed with the Court. Pte Ryerse was obviously torn between his duties and the human demands of his wife. Although this is not to be condoned I submit that the Ryerse was obviously distressed mentally and the fact that he realized that his W.W.L. was not provided good should receive the consideration and sympathy of the Court.

② The fact that civil authorities arranged for defending counsel from Pte Ryerse's own Regiment, Cdn L.A.A.R. Regt., who did not appear at his trial (civil) is a fact that may have had far reaching effects - it is clear from the Ryerse's evidence that he most certainly did not understand all legal involvements concerned with his civilian trial. And, it is further apparent that he believes his two months absence was considered by the court as matter detrimental to his cause and influenced them in giving the rather severe sentence of Six months hard labour for the charge of Stealing by trick & 3-0-0. Somehow may or may not have been influenced by defending counsel at the civilian trial but the possibility of such should I submit be most earnestly considered by the court.

③ It does not seem fair that Pte Ryerse should be allowed to go free for one whole month, most equitably since he solicited the information as to whether he was charged or no and received a negative reply, and then to be suddenly confronted by a charge and placed under close arrest. At no time after his release from civilian gaol while in the custody of the Provost Corps, with the R.A.S.C.

or what he did on the 1st C.D. on the 1st A.A. Regt up until the time of his sudden arrest nor it ever intimated he would ever be duly charged. Such procedure does not seem to indicate efficient handling of the case and certainly does not augur well for good morale. This also I submit should be considered by the Court.

(4) The six months hard labour (reduced by 2 months for good behaviour) would seem to be more than sufficient punishment for the correlated civil and military offence. Further punishment would only seem brutal and unwise and certainly would not augur well for the mental attitude of the accused. This also I submit for the consideration of the Court.

(5) And finally, the accused is a husband and also now a father — the child being born while he was in prison serving a sentence for a charge that he does not believe himself to have been guilty of and which in any event was not for the welfare of his wife and his fatherhood. He is prosecute strong desire to be able to be back with wife and child as a normal husband and father and in view of the several points above it would appear, I submit, that such plea has no foundation in merit and should receive the consideration of the Court.

R H Morgan, Lieut
A/Adjty
7th Bde A.A. Regt., R.C.A.

CANADIAN
LEGION
WAR SERVICES
4 JAN 1941

Mrs. L. Pearse

[illegible]

Bromley District

[illegible]

Bromley

Kent

4/1/44

Dear Sir

I am writing to you concerning my husband Eyanor H. Pearse who is about to be court martialled for being sixty days A.W.O.L. I wish to let you know that he did it for me because I at that time had nowhere to go or to live as I was expecting my baby and he got a temporary job until I had gone into hospital. I know how wrong he was but I would be very grateful if you could try to lighten the circumstances for him at the court martial as he has

(2)

not very long been out of prison for other reasons and I feel sure that in future he will make up for all he has done.

I remain

Yours Faithfully

Mrs L. Pearse

ORIGINAL

SUMMARY OF EVIDENCE
in the case
of

B15031 Pte. RYERSE, Harry Arthur, (RCASC) 7 Cdn LAA Regt, a soldier of the Cdn Army Overseas.
Taken on oath by order of Lt.-Col. H.J. Inns, Commanding 7 Cdn LAA Regt.

Prosecution 1st Witness:- B22597 Sgt. O'Donnell, J., Tp Sgt "C" Tp 42 Bty, 7 Cdn LAA Regt., having been duly sworn, States:-
"On 26 May 43 at approx 0900 hrs Bdr Drysdale reported to me the absence of Pte Ryerse from tatoo at 2230 hrs on the night of 25 May 43. Bdr Drysdale's statement concerning the accused was that at approx 1800 hrs on the night of 25 May 43, Pte Ryerse left his quarters and failed to return at tatoo report at 2230 hrs 25 May 43. I immediately informed BSM Smith of 42 Bty and my tpcomd, Capt. H.A. Blanchard, of the accused's absence. On 18 Jun 43 Pte Ryerse was S.O.B. as a deserter or absentee without leave. In that interval I had not, at any time, seen Pte Ryerse."

James O'Donnell

The accused declines to cross examine the witness.

Prosecution 2nd Witness:- Capt. H.A. Blanchard, 42 Bty, having been duly sworn, States:-
"In May 43 I was Tp Comd "C" Tp 42 Bty. In the later part of the month, I cannot remember just what day, my tp Sgt, Sgt O'Donnel, reported to me that the accused was AWL. I investigated and found that this was true. I have not seen Pte Ryerse since that time until he returned to the 42 Bty on or about 22 Dec 43."

H.A. Blanchard

The accused declines to cross examine the witness.

After having read Para 4(e) of the Rules of Procedure, the accused, having been duly sworn, states:-
"On 25 May 43 my wife came to me at Bromley, Kent, and told me that she had been kicked out of her home and asked me what I should do. As she was pregnant and was about seven months gone I told her I would come with her and see what we could do. As we could not find a place to go and I, as a husband, stayed with my wife and looked after her until the time came for her to go to the hospital, and in that time, I was working at odd jobs and keeping the both of us until I ran short of money and saw a girl I knew and asked her if I could have some money and which I made a promise to pay her back within a week. As I did not pay her back in this time she laid a charge against me in civil court and the police picked me up at Eltham about a week after I got the money from her. The civil court charged me with stealing by trick off this girl in which they sentenced me to six months hard labour in Wandsworth Scrubbs, in which I spent four months of the six and two months off for good behaviour. So I am asking, on my own behalf, that I could have another chance and prove to you that I will make good".

H Ryerse

The foregoing summary of evidence was taken before me on oath in the presence of the accused at 93 Pembroke Crescent, Hove, Sussex on the 30th day of Dec 1943. Paras 4 (c) (d) and (e) of the Rules of Procedure have been complied with.

(T.P. Francis) Capt.,
Adjutant,
7 Cdn LAA Regt.

SUPPLEMENTARY SUMMARY OF EVIDENCE
in the case
of

B15031 Pte. RYERSE, Harry Arthur, (RCASC) 7 Cdn LAA Regt, a soldier of the Cdn Army Overseas.
Taken on oath by order of Lt.-col. H.J. Inns, Commanding 7 Cdn LAA Regt.

Prosecution 3rd Witness:- C63688 Bdr. Drysdale, J., 42 Cdn LAA Bty, 7 Cdn LAA Regt, having been duly sworn, states:-
" I am NCO i/c cooks C Tp, 42 Cdn LAA Bty. On 25 May 43 Pte Ryerse left his quarters after duty and was absent at tatoo roll call at 2230 hrs 25 May 43. On 26 May 43 Pte Ryerse failed to report for duty in the kitchen and at approximately 0900 hrs 26 May 43 I reported his absence to the Tp Sgt, Sgt O'Donnell. I have not seen Pte Ryerse since that time until I returned from leave 1 Jan 44."

J. Drysdale

The accused declines to cross examine the witness.

Prosecution 4th Witness:- Lieut E.G. Campbell, Bty HQ Subaltern 42 Cdn LAA Bty, having been duly sworn, states:-
"I submit certificate of apprehension in accordance with AA Sec 163(m), from Metropolitan Police dated 27 Jul 43, referring to B15031 Pte Ryerse, Harry Arthur, of the 7 Cdn LAA Regt RCA, apprehended at ELTHAM HILL S.E.9. in uniform at 1745 hrs 26 Jul 43. Certificate is signed by G. Goodbody, i/c Eltham Police Stn."

E.G. Campbell Lt.

The accused declines to cross examine the witness.
The document referred to by the witness, produced, read over to the accused, marked Exhibit A, signed by me, and attached hereto.

D. Duncan Capt

supplementary
The foregoing summary of evidence was taken before me on oath in the presence of the accused at 93 Pembroke Crescent, Hove, Sussex, on the 2nd dau of Jan 1944. Paras 4 (c) (d) and (e) of the Rules of Procedure have been complied with.

D. Duncan Capt.
(D.P. Francis) Capt.,
Adjutant,
7 Cdn LAA Regt.

LIST OF WITNESSES

In the case of B15031 Pte RYERSE, H.A., 42 Bty, 7 Cdn LAA Regt.

For the Prosecution

Capt. H.A. Blanchard	42 Bty, 7 Cdn LAA Regt.
B22597 Sgt. O'Donnell, J.	" "
C63688 Bdr. Drysdale, J.	" "
Lieut. F.G. Campbell	" "

For the Defence

None

I hereby request that the Convening Officer appoint Lieut. H.L. Morgan, 42 Bty 7 Cdn LAA Regt, to represent me at my forthcoming Court Martial.

30 Dec 43

H. Ryerse
B15031 Pte Ryerse, H.A.

I hereby acknowledge that I have received a true copy of the Summary of Evidence taken at 93 Pembroke Crescent, Hove, Sussex, preliminary to my Court Martial, and I further acknowledge receipt of a copy of the charge sheet under which I am being brought to Court Martial.

30 Dec 43

H. Ryerse
B15031 Pte Ryerse, H.A.

LIST OF EXHIBITS

1. Certificate in accordance with AA Sec 163(m), Certificate of Apprehension by Metropolitan Police, Eltham Hill, S.E.9, for B15031 Pte Ryerse, H.A., dated 27 Jul 43.

Regimental No. B/15051 Rank Gnr. Sheet No. 5

MFM 1 & 2a
40/P & S/110 (3913)

Name RYERSE Harry Arthur

Record of Promotions, Reductions, Transfers, Casualties, Reports, etc—	Rank Shown	Effective Date	Unit	Place	Authority: IO Number	Authority: Dated
AA.15(1) 7 days C.B. forf. 8 days pay FR&I 149 (1)(a)	Gnr.	22 Jun.42.	5 L.A.A.	U.K.	33	1 Jul.42.
AWL 12 hrs.Awd. 7 days CB. Forf. 8 days pay	Gnr.	20 Oct.42.	5 L.A.A.	U.K.	50	28 Oct.42.
Pun. 8 days pay	Gnr.	30 Nov.42.	5 L.A.A.	U.K.	56	9 Dec.42.
AWL 23 hrs. 30 mins. Forf. 1 days pay	Gnr.	13 Dec.42.	3 CARU	U.K.	3	5 Jan.43.
A.A.Sec.15(1) 14 days F.P. Forf.35 days pay,plus Stopp.pay 4/8d.	Gnr.	9 Feb.43.	3 CARU	U.K.	37	15 Feb.43.
14 days CB. Sec.15(1) A.A. Forf. 1 days pay.	Gnr.	20 Mar.43.	7 L.A.A.	U.K.	15	2 Apr.43.
AWL from 2230 hrs. 25 May 43. Still AWL 2230 hrs. 2 Jun.43.	Gnr.	25 May 43.	7 L.A.A.	U.K.	28	16 Jun.43.
AWL from 2230 hrs.25 May 43. Still AWL 2230 hrs. 15 Jun.43. (22nd day)	Gnr.	25 May 43.	7 L.A.A.	U.K.	31	25 Jun.43.
SOS as Deserter. Def. in kit £6.4.11d.	Gnr.	18 Jun.43.	7 L.A.A.	U.K.	33	6 Jul.43.
TOS from desertion on apprehension 1745 hrs.	Gnr.	26 Jul.43.	7 L.A.A.	U.K.	40	18 Aug.43.
SOS to CASCRU on adm. to H.M.Prison,Wormwood Scrubbs (6 months H.L.)	Gnr.	30 Jul.43.	7 L.A.A.	U.K.	40	18 Aug.43.
Forf. 188 days pay.		30 Jul.43.	7 L.A.A.	U.K.	41	27 Aug.43.

CERTIFIED TRUE EXTRACTS FROM M.F.M. 2.

R A Wickware

.....

(R.A.WICKWARE) Lieut.
for Officer i/c Records,
CANADIAN MILITARY HEADQUARTERS

M.F.M. 6
(A.F.B. 121)

No. B15031 Name Ryerse, H.A. Sqn., Battery or Company | Corps RCA | Date of enlistment 19Jul40 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
UK		Gnr		AA15(1) AWL		7 days CB	22Jun42		forf 8 days pay for period of AWL
UK		"		AA15(1) AWL 12 hrs		7 days CB & FORF 6 days pay	20Oct42		forf 1 days pay for period of AWL
UK		"		AA15(1) AWL 23hrs 30min			13Dec42		forf 1 days pay for period of AWL
UK		"		AA15(1) AWL		14 days FP	9Feb43		forf 35 days pay plus stop 4/6d
UK		Pte		AA15(1) AWL		14 days CB	20Mar43		forf 1 days pay for period of AWL
UK		"		Larceny, civil offence		6 months H.L.	30Jul43		forf 186 days pay

CERTIFIED TRUE EXTRACTS FROM MFM 2

Adjt 7 CD. LAA Regt.

(P.T.O.)

M.F.B. 355
2234—5-41 (372-0)
H.Q. 1772-39-620
A.F.B. 256

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B15031	Pte	HYESE H.A.	42 Bty 7 Cdn LAA Regt

1. The following is a fair and true summary of the entries in the ~~Conduct sheets~~ Regimental and Equestrian Entries or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment of ~~appellant~~
For A.A. Sec 15(1)	3 times	6 times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct Nil

~~The entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The convictions set out previously entered~~

Nil.

Previous convictions of the accused by a court-martial or a civil court of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and dispensations with trial under ~~A.F.~~ A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

Nil.

~~The accused is not under sentence at present time~~ ~~relating to the~~

~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for No days in ~~Air Force~~ civil custody, and 10 days in military custody, making a total of 10 days in custody, of which No days were spent in hospital.

5. The present age of the accused according to his record of service is ~~attestation paper is~~ 27 years 4 months 18 days

6. The date of his ~~attestation~~ specified in his record of service is ~~attestation paper is~~ 19 Jul 40

7. The service which the accused is allowed to reckon towards discharge is 3 years 5 months 17 days

8. The accused is entitled to reckon 3 years 5 months 17 days service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~service~~ decoration, or ~~service~~ reward (or is in possession of or entitled to). ~~Stand any air force decoration or reward~~ military

~~10. If the accused is a warrant officer.~~ ~~The accused before he was made a warrant officer had held~~

~~As Yeoman~~

~~the regimental rank of~~

11. (In the case of an officer.) The deceased holds in the Royal Canadian Air Force the rank of Permanent Force and in the regiment (or corps) the rank of dated .

12. The deceased has served as a non-commissioned officer continuously without reduction, to the present date :—

	Date of promotion
In the rank of	
In the rank of	
In the rank of	

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number [illegible] Rank Pte Unit Name RYERSE H.A. of 42 Bty 7 Gdn LAA Regt Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
Bromley Petty Sessions	Bromley Kent 30 Jul 43	Conjoined with Lillian Violet Ryerse in stealing by means of a trick the sum of £ 3., the monies of Rosetta Folkard at Mottingham	6 months hard labour	2 months for good behavior.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 5th day of January 1944 [illegible] CAPT RCA ADJT 7 CDN LAA Regt

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

Jan 44

5-S-118

Ete Q yrsa. H.E.

338

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : B 77563 Pte Kyerne H. E.; 4 VRD, 1 CCCD

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	~~AA Sec 15 (1)~~	GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ~~[illegible]~~ (beginning on (date)) (1)

(1. Insert sentence being served, or delete. If not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 22 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for a period of One Hundred and Fifty (150) days.

(Sgd) ..... Judge-Advocate, if any. 30 Aug/45 Date awarded. (Sgd) [signature] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Yes

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further order.~~ (1) (1. AA 57A. Delete if not used.)

Date 31 Aug 45 (Sgd) J. E. Lager Brigadier Commanding F Sqn. C.R.C. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B 77563 Pte Kyerne H.E.	3 Oct 45	[signature]

1 CCCD Part II D.O. No. 111 d/7 Sep 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 18 SEP 1945 E.M.H.Q.

RECORDED AT CMHQ IN AB 168 No. 55-118

FIELD GENERAL COURT-MARTIAL

CFA66 (To take place of AFAA) 40/P & D/1698 (H.144) 4/38B

Convened by Order of Brigadier J. E. Lager, Comd "F" Sqn, CRU dated 29 Aug 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 193, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 77563	Pte	Harold Eugene	KYERSE	4 VRD, 1 CCCD

PROCEEDINGS REVIEWED

18 Sept 45

[signature] Capt.

REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 30 Aug 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA~~, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused:~~ Do you object to [illegible] as interpreter ? Ans —

~~The Interpreter is sworn.~~(1) Do you object to LOTTA SINCLAIR as shorthand writer ? Ans NO

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO, SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Lt-Col	D.L. REDMAN	RCASC
Member	Capt	A.G. HOLLAND	1 CCCD
Member	Lt	N.F. WILTON	1 CCCD
~~Judge-Advocate~~			
Prosecutor	Capt	H.W. DICKINSON	1 CCCD
Defending Offr	Lt	M. MACKENZIE	1 CCCD

Questions by President : Is the Prosecutor a lawyer ? Ans NO. Is the Defending Offr a lawyer ? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 69 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused ..... before arraignment make(s) (no) (a) plea .....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 7. The proceedings are continued on Record Form "B".

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans N O .(5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex I, initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans..... Do you intend to call witnesses on your behalf ?

Ans..... Are they witnesses as to character only ? Ans.....

(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(6).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans N O - I W

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), ~~and certified true copy (copies) of Conduct Sheet(s)~~(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex E ~~and F~~ respectively.(3)

(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. ~~President to accused :~~ Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans N O T - A T

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A. if any~~.(2)

(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B-77563 Private Harold Eugene KYLNSK, on strength No. 4 V.R.D., 1 Cdn Central Ordnance Depot, a soldier of the Canadian Army Overseas, is charged with:-

WHEN ON ACTIVE SERVICE

FIRST CHARGE — ABSENTING HIMSELF WITHOUT LEAVE

Army Act Section 15(1)

In that he:

At Greenhills, No. 2 V.R.D., 1 Cdn Central Ordnance Depot, did absent himself without leave from 2359 hrs 15 June 45 until apprehended in Blackpool at 1445 hrs 8 August 45.

(Absent 53 days 14 hours 46 mins)

H Hamer

(H. Hamer) Lt-Col.,
C.O. Depot Bn.,
H.Q., 1 Cdn C.O.D.

Field
Aug 45.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

J. E. Page

29 Aug 45

(J. E. SAGER) Brigadier,
Comd "F" Gp, CMH.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(b).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 77563	Pte		Harold Eugene	RYENGR	4 VRD 1 CCCD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 29 Aug 45 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Col	D. L. Redman	Hq, CMU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
One Capt	from and to be detailed by OC	1 CCMU
One Lt	from and to be detailed by OC	1 CCMU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.) — J. E. Rogers (J. E. ROGERS) (Signed personally. RP 105 fn 2.) — Brigadier, (Rank.)

Dat 29 Aug 45 — Commanding Cond "F" Gp, CMU, — Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 96 (In Lieu of AFA 3) 40/P & S/1897 (6143)

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S REPORT

I certify that No. B.77563 Pte. Ryerse, M.E.

of 4 VRD 1 CCOD is in a Good state of health,

and fit to undergo Trial by Court martial.

Medical Officer

Station 4 VRD. 1 CCOD

Date 30 Aug 45

M. F. B. 246

21M—9-41 (1743)
H.Q. 1773-39 440

PLEA OF MITIGATION

In the case of

B-77563 Pte RYERSE, HAROLD EUGENE

B-77563 Pte Ryerse, H.E., having pleaded guilty to the charge on which he has been arraigned, there are a fewpoints I would like to bring to the attention of the Court before sentence is made resolute.

1. Pte Ryerse, born 8 Apr 24, attended Public and Technical School until he was sixteen years of age, at which time he became an aprentice watchmaker for nine months, thence a machinist in an armament factory till he joined His Majesty's Canadian Forces as a soldier on 4 Nov 42.

2. The accused was eighteen years seven months old when he joined the Service, and after completing basic and advanced training was transferred to hisown home town to attend classes at a trade school. This employment suited him and here he again became a student after two years away from school. On transfer from the trade school he was stationed at Barrfield Camp where he continued with his Army career, being assigned to general duties. He is twenty years old at this stage of his training.

3. At the age of twenty Pte Ryerse arrived Overseas (UK) where he underwent further training and carried out military duties at Yorkshire, Bordon, 5 VRD 1 CCOD, No. 1 COMMRU, and 2 VRD. The accused isnow twenty-one years four months old.

I submit this plea in the case of B-77563 Pte Ryerse, Harold, Eugene, that you may consider his schooling and Army career in conjunction with his youth and so alleviate the punishment you are about to impose.

H. MacKenzie Lieut.
(H. MacKenzie) Lieut.,
Officer forthe Defence.

30 Aug 45.

E-3

Summary of Evidence in the case of E-77563, Private Harold Eugene HYBERT, on strength No. 4 V.R.D., 1 Canadian Central Ordnance Depot, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS for the Prosecution — Lieut. L.E. Anderson, on strength H.T. Tech Stores Coy., 1 Canadian Central Ordnance Depot, an officer of the Canadian Army Overseas, having been duly sworn, states:-

I am Lieut. L.E. Anderson, H.T. Tech Stores Coy., 1 Cdn Central Ordnance Depot. I was Regimental Officer at No. 2 V.R.D., 1 Cdn Central Ordnance Depot from 21 June 45 till 6 August 45.

I produce the following document pursuant to Overseas RO 5352 which has been read over and shown to the accused, and which is attached hereto as Exhibit "A".

I further produce a certificate pursuant to A.A. 163 (1) (j) purporting to be signed by the Adjutant for the Officer in charge C.M. Police at Blackpool, Lancs., relating to the accused, whom I now recognize, and which is attached hereto as Exhibit "B".

"Exhibit A". Certified true extract of an entry in 1 Cdn Central Ordnance Depot, Part II Order No. 79, dated 22 June 45, which shows the accused as being Absent Without Leave from 2359 hrs 15 June 45.

"Exhibit B". Certificate of Apprehension, Army Form B 252, which shows the accused as having been apprehended in Blackpool, Lancs., at 1445 hrs on the 8 August 45.

L.E. Anderson Lt.

The accused declines to cross examine the witness.

The accused was cautioned as follows: "Do you wish to make any statement or give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the hearing and presence of the accused, and that Rules of Procedure 4(c),(d),(e),(f), and (g) have been complied with.

L.E. Anderson Lt.
Officer detailed to take the Summary of Evidence.

EXA

PART II ORDERS
Issued By
BRIGADIER R.J.HENDERSON, C.B.E.
Commandant
1 CANADIAN CENTRAL ORDNANCE DEPOT, R.C.O.C.

Last Order No. 78
d/20 June 45

This Order No. 79
d/22 June 45

1. STRENGTH INCREASE — "A" OFFICERS

A/Capt (1) — C L Roode (RCEME) 4 VRD — TOS from CMHQ (CAE Br) wef 15 Jun 45 & posted to MTTS Coy (Auth: CMHQ (MS5) MS 3542 d/7 Jun 45)

2. ATTACHMENTS

Lieut (1) — G S Chalmers 2 VRD — Cease att fap (except disc) from 1 CGPC wef 18 Jun 45

Supvr (2) — C J Girard 1 VRD — Att fap (except duty) to 1VRD from Cdn Aux Serv (UK) wef 13 Jun 45 (Auth: CRU (Pers) A 4397 d/11 Jun 45)

Capt (3) — George Zimmerman (CDC) HQ — Att fap (except duty) to HQ from 1 CGRU wef 14 Jun 45 (Auth: CRU/Dent 27 d/13 Jun 45)

3. LEAVE OF ABSENCE

Lieut (1) — C L Aldridge 2 VRD — Granted 14 days PL from 13 Jun 45 to 26 Jun 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4).

Lieut (2) — J S H Duke MT Coy — Granted 7 days PL & 96 hrs pass (total leave & entitlement 11 days) from 16 Jun 45 to 26 Jun 45 with money allce in lieu of rations under FR&I(O/S)Art 789(3)&(4).

Lieut (3) — M MacKenzie (2 CARU) 2 VRD — Granted 7 days PL & 96 hrs pass (total leave & entitlement 11 days) from 18 Jun 45 to 28 Jun 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)

1. STRENGTH INCREASE — "B" OTHER RANKS

D 156092 (1) — Pte McDonald J C 4 VRD — TOS from 1 CCMEHU wef 19 Jun 45 & posted to Veh Coy (Auth: CRU 408/1 CCOD/1 (PTA) d/13 Oct 44)

2. ENLISTMENTS

Volunteered for the Pacific Theatre wef dates shown

L 9864 — Cfn Aydt A J — 18 Jun 45
K 45293 — Cfn Hall I M — 15 Jun 45
A 55212 (1) — Pte Porter H E 2 VRD — 18 Jun 45 — Dvr Mech (Tank)"C" Stmn "C"
D 12234 (2) — Cfn Bisson E F (Veh Mech 2 VRD) — Volunteered for the Pacific Theatre wef 18 Jun 45 (Stmn "B") 21 Jun 45

3. ATTACHMENTS

D 138393 (1) — Pte Bisaillon J C 4 VRD — Cease att fap (except regtl duty) from 16 CBDC wef 17 Jun 45 (Auth: ADDS, CRU (Dent 37) d/15 Jun 45)

(OVER)

1 CANADIAN CENTRAL ORDNANCE DEPOT, R.C.O.C.

PART II ORDERS

Sheet No. 2 — This Order No. 79 d/22 June 45

3. ATTACHMENTS (Cont'd)

E 7506 Pte Soulard J P (2) 4 VRD — Att fap (except regt'l duty) to 4 VRD from 16 CBDC CDC wef 19 Jun 45 (Auth: ADDS, HQ CRU/Dent 43 d/18 Jun 45)

(Amend)
H 41619 L/Cpl Robinson H E (3) MT Coy — Part II DO 74 para 3(1) d/9 Jun 45 insofar as it refers to this NCO is hereby am'd to read for "L/Cpl" read "A/Cpl"

4. COMMAND

Proceeded on Command to Derby wef 0800 hrs 10 Jun 45 Returned from on Command 2030 hrs 12 Jun 45

B 57045 A/Cpl Rooney E J
C 53150 Pte Crowe A D
B 142607 Pte Ireland F M
(1) 4 VRD

M 50496 Pte Nelson P E
L 100432 Pte Peterson J L
A 9698 Pte Winstanley J R

(Amend)
H 96066 Pte Jamieson M W C (2) MT Coy — Part II DO 73 para 3(5) d/8 Jun 45 insofar as it refers to this soldier is hereby am'd to read for "H 96066" read H 76066"

5. LEAVE OF ABSENCE

K 73016 Sgt Agnew R A (1) HQ — Granted 14 days PL from 12 Jun 45 to 25 Jun 45 with money allce in lieu of rations under FR&I (O/S).Art 789(3)&(4)

Granted 7 days PL & 48 hrs pass (total leave & entitlement 9 days) from 16 Jun 45 to 24 Jun 45 with money allce in lieu of rations under FR&I (O/S).Art 789 (3)&(4)

K 68704 Cfn Alvaro M J (RCEME)
A 29336 L/Cpl Gibson H (RCEME)
E 49791 Pte LeBlanc R J
D 137851 Pte McKee S A
A 6071 Pte Trussler L W
(2) 2 VRD

K 83022 Cpl Carson F S (RCEME)
K 71775 Cfn Hunt A H (RCEME)
B 94599 Pte Lockwood D W (RCEME)
A 37762 Pte Saunders F
A 50139 Pte Van Riemsdyke W

Granted 4 days leave from 7 Jun 45 to 10 Jun 45 with money allce in lieu of rations under FR&I (O/S).Art 789(3)&(4)

M 54231 Pte Armstrong H W
L 110253 Pte Dunn C C
M 101325 Cpl Elsworthy W
C 15508 CSM Jamison L G
(3) HQ

L 13434 L/Cpl Corry J P
C 73661 Cpl Edwards J L
B 9156 Pte Harris S H
C 65435 Pte Jeffreys T

K 47118 Sgt Ballam O R 1 CGPC
L 35312 Gnr Clark C F 1 CGPC
G23073 Pte McInnis H M 1 CGPC
L 61848 Gnr Kosnoski W 1 CGPC
(4) 2 VRD

Granted 7 days PL & 96 hrs pass (total leave & entitlement 11 days) from 16 Jun 45 to 26 Jun 45 with money allce in lieu of rations under FR&I(O/S).Art 789(3)&(4)

M 3757 Pte Bernuy G E (5) HQ — Granted 7 days PL & 48 hrs pass (total leave & entitlement 9 days) from 15 Jun 45 to 23 Jun 45 with money allce in lieu of rations under FR&I (O/S).Art 789(3)&(4)

(OVER)

5. LEAVE OF ABSENCE (Cont'd)

Granted 7 days PL & 96 hrs pass (total leave & entitlement 11 days) from 16 Jun 45 to 26 Jun 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)

A 64493	Pte	Baxter J V	F 30640	Cfn	Bell J L	(RCEME)
F 94611	Pte	Betts J E	K 51694	Pte	Borley A T	
C 33626	L/Cpl	Butts E H	A 39885	Cpl	Cadden P A	
D 122509	Pte	Clark A J	B 85942	Pte	Cobourn J A	
D 109216	Pte	Cohen H	B 80392	Pte	Dube C	
M 50699	Cfn	Fitzsimmons T R (RCEME)	H 100363	Pte	Foy P	
L 103118	Pte	Franson E C	F 58011	Pte	Giffin I C	
B 2495	Cfn	Hawman H H (RCEME)	F 35100	SQMS	MacDonald W H	
L12381	A/Sgt	McWilliams G D	B 119265	Pte	Metcalfe A R	
M 36609	Cfn	Metge W F (RCEME)	A 59577	Cfn	Nephew F G	(RCEME)
K 76587	Cfn	Pernorowski A (RCEME)	L 28284	Pte	Poh S	
K 49109	Pte	Popeck C	B 114324	L/Cpl	Price J W	
F 31004	Pte	Robinson F W	B 143638	Pte	Spencer L	
K 70536	Cfn	Taylor G A (RCEME)	B 77713	Pte	Whitcombe V	
B 53449	Pte	Woodhouse A W	M 56099	Pte	Whitelock W E	
B 58199	L/Cpl	Donnan H	B 9329	Pte	Duff N W	
B 1022	Pte	Kinnear R J	F 52699	Pte	Waterman R L	
(6)	2 VRD					

Granted 7 days PL & 96 hrs pass (total leave & entitlement 11 days) with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4) wef dates shown:

M 103362	Pte	Bergeron C J	16 Jun 45	to 26 Jun 45
D 7734	Gnr	Bertrand E (1 CARU)	16 Jun 45	to 26 Jun 45
B 148875	Pte	Carter W A	16 Jun 45	to 26 Jun 45
G 17280	PSM	Dennison F T	19 Jun 45	to 29 Jun 45
B 101094	Sgt	Donovan T P	13 Jun 45	to 23 Jun 45
C 15794	Pte	Dupuis C	24 May 45	to 3 Jun 45
D 36626	Pte	Fagen S	15 Jun 45	to 25 Jun 45
B 22554	Gnr	Franceus M (2 CARU)	16 Jun 45	to 26 Jun 45
F 89604	Pte	Goucher T M	15 Jun 45	to 25 Jun 45
F 30687	Pte	Ireland S A W	16 Jun 45	to 26 Jun 45
G 94808	Cpl	Modaglia J	15 Jun 45	to 25 Jun 45
B 111573	Pte	Meyer A E J	19 Jun 45	to 29 Jun 45
A 103241	Pte	Miller C C	16 Jun 45	to 26 Jun 45
H 77834	Pte	Mowat A (1 CGPC)	16 Jun 45	to 26 Jun 45
G 51257	L/Cpl	Norrad K E	15 Jun 45	to 25 Jun 45
L 8235	Pte	Ovington J P	19 Jun 45	to 29 Jun 45
H 247	Tpr	Stewart D L (1 CGPC)	16 Jun 45	to 26 Jun 45
E 49773	Pte	Tessier A	13 Jun 45	to 23 Jun 45
B 57536	Pte	Third A R	24 May 45	to 3 Jun 45
L 27647	Pte	Umpherville W J	14 Jun 45	to 24 Jun 45
B 64743	Rfn	Ward W	15 Jun 45	to 25 Jun 45
L 9163	SQMS	Warren J T	16 Jun 45	to 26 Jun 45
H 40961	Pte	Whittaker W G	19 Jun 45	to 29 Jun 45
(7)	MT Coy			

Granted 7 days PL & 48 hrs pass (total leave & entitlement 9 days) from 15 Jun 45 to 23 Jun 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3) & (4)

C 48534	Pte	Bianco J F	A 22179	Pte	Connamo P J
E 10195	Pte	Duguay G G	A 102777	Pte	Handsor K C
F 602586	Pte	Leblanc A (1COMERU)	D 82924	Pte	Mortick A
(8)	HR Coy		B 18922	Pte	Weir T C

M 61505	Pte	Brown F W	Granted 7 days PL & 48 hrs pass (total leave & entitlement 9 days) from 19 Jun 45 to 27 Jun 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)
L 28040	Pte	Caine T H (1 CITR)	
(9)	HQ		

(OVER)

5. LEAVE OF ABSENCE (Cont'd)

Granted 7 days PL & 96 hrs pass (total leave & entitlement 11 days) with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4) wef dates shown:

C 12643	Pte	Bourgon J A L	23 May 45 to	2 Jun 45
B 50142	Pte	Hills V G	24 May 45 to	3 Jun 45
B 111913	Pte	Sherry E T	25 May 45 to	4 Jun 45
F 65342	Pte	Whalen J J	25 May 45 to	4 Jun 45
L 26375	Pte	Williams J S	25 May 45 to	4 Jun 45
(10)	MT Coy			

Granted 4 days leave from 1 Jun 45 to 4 Jun 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)

M 61505	Pte	Brown F W	D 137642	Pte	Grant J B
H 64753	Pte	Hodgson R E	K 53334	L/Cpl	Hutchison D
K 34497	Cpl	Markell H B	H 95780	Pte	McKague E B
C 98478	Pte	Nesbitt L F	D 127411	Pte	Rabin A
(11)	HQ		L 13764	Pte	Scherer E

Granted 7 days PL & 48 hrs pass (total leave & entitlement 9 days) from 19 Jun 45 to 27 Jun 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3) & (4)

B 91764	Pte	Butnich L	M 388	Pte	O'Callaghan J
L 102732	Pte	Campbell D G	F 31285	Pte	Smith A R
(12)	4 VRD		C 5239	L/Cpl	Huffman J L

B 2761	L/Cpl	Campbell J B	Granted 7 days PL & 96 hrs pass (total leave & entitlement 11 days) from 19 Jun 45 to 29 Jun 45 with money allce in lieu of rations under FR&I (O/S)Art 789 (3)&(4)
H 37875	Pte	Johnston J R	
H 100728	L/Cpl	Ogroskin D	
B 145590	Pte	Williamson D C (1 S P Sec)	
(13)	HQ		

K 52930	Sgt	Cathers W	Granted 7 days PL & 96 hrs pass (total leave & entitlement 11 days) from 17 Jun 45 to 27 Jun 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)
(14)	HQ		

F 75922	Pte	Dalton C	Granted 4 days compassionate leave from 7 May 45 to 10 May 45 with money allce in lieu of rations under FR&I(O/S)Art 789 (3)&(4)
(15)	1 VRD		

F 75922	Pte	Dalton C	Granted 7 days PL & 48 hrs pass (total leave & entitlement 9 days) from 16 Mar 45 to 24 Mar 45 with money allce in lieu of rations under FR&I(O/S)Art 789(3)&(4)
(16)	1 VRD		

F 3361	Pte	DeMille I M	Granted 14 days PL from 15 Jun 45 to 28 Jun 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)
(17)	2 VRD		

B 103061	Pte	Dinsmore K D	Granted 7 days PL & 48 hrs pass (total leave & entitlement 9 days) from 17 Jun 45 to 25 Jun 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)
(18)	HQ		

H 3502	S/Sgt	Dunbar R	Granted 7 days PL & 48 hrs pass (total leave & entitlement 9 days) from 20 Jun 45 to 28 Jun 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)
(19)	HQ		

(OVER)

5. LEAVE OF ABSENCE (Cont'd)

Granted 7 days FL & 48 hrs pass (total leave & entitlement 9 days) with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4) wef dates shown:

H 60279	Gnr	Favel C H	1 CGPC	16 Jun 45 to 24 Jun 45
B 2683	L/Cpl	Warrell H H		18 Jun 45 to 26 Jun 45
(20)		1 VRD		

C 63322	Pte	Ferguson C	Granted 7 days FL & 48 hrs pass (total
D 127411	Pte	Robin A	leave & entitlement 9 days) from 20 Jun
(21)		HQ	45 to 28 Jun 45 with money allce in lieu
			of rations under FR&I (O/S)Art 789(3)&(4)

M 101313	Pte	Gauthier D E	Granted 14 days FL from 15 Jun 45 to
(22)		HQ	28 Jun 45 with money allce in lieu of
			rations under FR&I (O/S)Art 789(3)&(4)

Granted 7 days FL & 48 hrs pass (total leave & entitlement 9 days) with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4) wef dates shown:

H 41928	Pte	Harvey A	19 Jun 45 to 27 Jun 45
G 53964	Pte	Kirk A R	14 Jun 45 to 22 Jun 45
L 35140	Pte	LeHockey G	19 Jun 45 to 27 Jun 45
A 3983	Pte	Melrose G L	19 Jun 45 to 27 Jun 45
F 95672	Pte	McGill R B	14 Jun 45 to 22 Jun 45
M 101694	L/Cpl	Perry S S	18 Jun 45 to 26 Jun 45
L 100423	Pte	Racette J L S	16 Jun 45 to 24 Jun 45
B 9247	Pte	Wilkins L L	14 Jun 45 to 22 Jun 45
A 86072	L/Cpl	Francis W J	16 Jun 45 to 24 Jun 45
(23)		MT Coy	

M 67393	L/Cpl	Herbert S F	Granted 4 days leave from 21 Jun 45 to
K 83514	Cpl	Jones E L	24 Jun 45 with money allce in lieu of
B 111361	Pte	Lay J C	rations under FR&I (O/S)Art 789(3)&(4)
(24)		HQ	

K 53334	L/Cpl	Hutchison D	Granted 7 days FL & 48 hrs pass (total
B 86742	Pte	Swadron I	leave & entitlement 9 days) from 18 Jun
L 41564	Pte	Love R M	45 to 26 Jun 45 with money allce in lieu
(25)		HQ	of rations under FR&I (O/S)Art 789(3)&(4)

C 98407	Pte	Jobin L	Granted 7 days FL & 96 hrs pass (total
G 19931	Pte	Richardson H M	leave & entitlement 11 days) from 15 Jun
(26)		HQ	45 to 25 Jun 45 with money allce in lieu
			of rations under FR&I (O/S)Art 789(3)&(4)

B 2527	Cpl	Keane J F	Granted 7 days FL & 48 hrs pass (total
(27)		HQ	leave & entitlement 9 days) from 14 Jun
			45 to 22 Jun 45 with money allce in lieu
			of rations under FR&I (O/S)Art 789(3)&(4)

F 52020	Pte	Loverman H J	Granted 7 days FL & 96 hrs pass (total
(28)		HQ	leave & entitlement 11 days) from 18 Jun
			45 to 28 Jun 45 with money allce in lieu
			of rations under FR&I (O/S)Art 789(3)&(4)

Granted 4 days leave from 14 Jun 45 to 17 Jun 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)

L 41564	Pte	Love R M	B 110549	Cpl	Meikle J W B
M 28002	L/Cpl	McCallum M	B 112086	Pte	Pascoe A N
C 103476	L/Cpl	Mangor J A	B 1654	L/Cpl	Schultz M E
(29)		HQ			

(OVER)

5. LEAVE OF ABSENCE (Cont'd)

B 9375 F 85679 M 521 (30)	Sgt Pte L/Cpl HQ	Jury W G Lowe C E (1 CONSRU) McKinnon A R	Granted 7 days PL & 96 hrs pass (total leave & entitlement 11 days) from 12 Jun 45 to 22 Jun 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)
L 27422 (31)	L/Sgt 2 VRD	McMaster J F (1CASCRU)	Granted 7 days PL & 96 hrs pass (total leave & entitlement 11 days) from 16 Jun 45 to 26 Jun 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)
F 30839 (32)	Pte 1 VRD	Oakley E R	Granted 7 days PL & 48 hrs pass (total leave & entitlement 9 days) from 26 Feb 45 to 6 Mar 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)
B 1746 (33)	L/Cpl HQ	Roden E R	Granted 7 days PL & 48 hrs pass (total leave & entitlement 9 days) from 14 Jun 45 to 22 Jun 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)
L 9262 (34)	Sgt 1 VRD	Summerville D J	Granted 14 days PL from 13 Jun 45 to 26 Jun 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)
M 60707 (35)	L/Cpl HQ	Watt D H	Granted 7 days PL & 96 hrs pass (total leave & entitlement 11 days) from 20 Jun 45 to 30 Jun 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)

6. ABSENT WITHOUT LEAVE

C 101821 (1)	Pte 1 VRD	Campbell H G	Returned from absent without leave wef 2359 hrs 13 May 45
A 55723 (2)	Pte 2 VRD	Hishon D F	Absent without leave wef 2359 hrs 15 Jun 45 Still absent without leave 2359 hrs 16 Jun 45 (1st day)
A 55723 (3)	Pte 2 VRD	Hishon D F	Returned from absent without leave wef 0830 hrs 21 Jun 45
F 78471 (4)	Pte 1 VRD	McKay A	Absent without leave wef 2359 hrs 16 Jun 45 Still absent without leave 2359 hrs 17 Jun 45 (1st day)
A 58276 (5)	Pte 1 VRD	Holmes J C	Returned from absent without leave wef 1600 hrs 18 Jun 45
B 77563 (6)	Pte 2 VRD	Ryerse H E	Absent without leave wef 2359 hrs 15 Jun 45 Still absent without leave 2359 hrs 16 Jun 45 (1st day)
D 82343 (7)	Pte 2 VRD	Stewart M D	Absent without leave wef 1200 hrs 10 Jun 45 Still absent without leave 1200 hrs 18 Jun 45 (8th day)

7. HOSPITALIZATION

B 1841 (1)	Cfn 4 VRD	Gray J J (RCEME)	Disch from 1 CMC wef 19 Jun 45

(OVER)

7. HOSPITALIZATION (Cont'd)

C 94658 (2)	Pte Logan B 2 VRD	Adm to 2 CMC wef 18 Jun 45
D 129059 (3)	Pte McCoy F M 1 VRD	Disch from CRS Burnham (Bucks) wef 15 Jun 45
A 67730 (4)	Cpl Pettigrew R M (RCEME) 1 VRD	Adm to 2 CMC wef 15 Jun 45

8. PUNISHMENTS

C 101821 (1)	Pte Campbell H G 1 VRD	On 20 Jun 45 awarded a forf of 7 days pay FR&I 149(2) for an offence under Sec 15 (1)AA AWL from 2230 hrs 16 Jun 45 to 0930 hrs 18 Jun 45 (Absent 1 day 11 hrs) Forfs 2 days pay FR&I 149(1)(a) (Total forf 9 days pay)
B 88659 (2)	Cpl Fick W B MT Coy	On 18 Jun 45 severely reprimanded for an offence under Sec 11 AA
D 94111 (3)	Pte Riopel J L MT Coy	On 19 Jun 45 awarded 14 days CB for (1) an offence under Sec 15(1)AA AWL from 2230 hrs 13 Jun 45 to 2245 hrs 13 Jun 45 (Absent 15 mins) thereby incurring cost of apprehension in the am't of £0-17-2 FR&I 172(8) for (2) an offence under Sec 40 AA
B 137645 (4)	Pte Rizzo C P 1 VRD	On 18 Jun 45 awarded a forf of 14 days pay FR&I 149(2) for (1) an offence under Sec 15(1)AA AWL from 1730 hrs 15 Jun 45 to 0700 hrs 16 Jun 45 (Absent 13 hrs 30 mins) for(2)AWL from 1700 hrs 16 Jun 45 to 0800 hrs 18 Jun 45 (Absent 1 day 15 hrs) Forfs 1 days pay FR&I 149(1)(a) Forfs 2 days pay FR&I 149(1)(a) (Total forf 17 days pay)

9. REMISSION OF SENTENCE

C 9488 (1)	Pte Airey G 4 VRD	Directed that 5 days of sentence of 30 days detention awd 14 Feb 45 be remitted wef 31 May 45 (Auth: CMU/420/Sentences/1 (Dis 1) d/8 Jun 45)(Extract 1 COMZMU DO 142 d/16 Jun 45)
F 91439 (2)	Pte Warner J R 2 VRD	Released from H M Prison, Aberdeen wef 23 May 45 and granted 59 days remission of sentence awd by Civil Ct on 22 Jun 44 (Extract 1 COMZMU DO 142 d/16 Jun 45)

10. CONFIRMATION OF RANK

L 7648 (1)	A/S/Sgt Margolis S D (1 Cdn HQ Repat Depot)	Confirmed in the rank of S/Sgt wef 30 May 45 (Auth: CMU/801/Promotions/33 d/30 May 45)
L 9056 (2)	A/S/Sgt Pruden L E (1 Cdn HQ Repat Depot)	Confirmed in the rank of S/Sgt wef 24 May 45 (Auth: CMU/801/Promotions/33 d/30 May 45)

(OVER)

1 CANADIAN CENTRAL ORDNANCE DEPOT, R.C.O.C.

PART II ORDERS

Sheet No. 8 — This Order No. 79 d/22 June 45

11. TRADESMENS QUALIFICATIONS

B 78063 (1) Pte McKerracher G, 1 VRD — Having been TT by a STTB as a Veh Mech MV "B" is now shown as Qualified wef 18 Jun 45 (Auth: Nom Roll for TT (27376) d/6 Jun 45)

M 65280 (2) Pte Richardson J G, 1 VRD — Having been TT by a STTB as a Veh Mech MV "B" is now shown as Qualified Veh Mech MV "C" wef 18 Jun 45 (Auth: Nom Roll for TT (27376) d/6 Jun 45)

12. TRADESMENS RATES OF PAY

L 65473, Pte Barthel A; L 66515, Pte Hillson E F; L 65467 (1) L/Cpl Petzel M J, MT Coy — Cease to draw T/Pay Dvr Mech MV "C" wef 11 Jun 45 Granted T/Pay as Veh Mechs MV "B" wef 12 Jun 45

A 9870 (2) Cpl Eady E G, MT Coy — Granted T/Pay Dvr Mech MV "C" wef 1 Jun 45

B 60910 (3) Pte Rainbird J T, 1 VRD — Granted T/Pay Stmn "C" wef 18 Jun 45

13. CHANGE OF ADDRESS NEXT OF KIN

F 75922 (1) Pte Dalton C, 1 VRD — Change of address N-of-K to: Mrs Margaret Anne Dalton (Wife) Brooklyn Ave, Sydney Mines, Cape Breton, N.S., Canada

B 9377 (2) Pte Gray N H, 4 VRD — Change of address N-of-K to: Mrs Louella Gray (Mother) 62 Berwick Ave, Toronto, Ontario, Canada

A 64750 (3) Pte Hicklin R, 4 VRD — Change of address N-of-K to: Mrs Francis Hicklin (Wife) 105½ King St, Chatham, Ontario, Canada

14. CHANGE OF NEXT OF KIN

B 56717 (1) Pte Chowen J L, HQ — Change of N-of-K from: Mrs Ethel Marguerite Chowen (Mother) to: Mrs Ethel Marguerite Channing (Mother) Midland Ave, Agincourt, Ontario, Canada

H 40865 (2) Pte Johnston H J, 2 VRD — Change of N-of-K from: Mrs Mabel Hall (Sister) to: Mrs Rosemary Johnston (Wife) 30 Sunny Hill, Witley, Surrey, England

15. PERMISSION TO MARRY

D 124420 (1) Pte Duffy E L, HQ — Granted permission to marry Miss Mary Goll on or after 18 Aug 45 (Auth: CMHQ 1000:110a d/19 Jun 45)

M 54231 (2) Pte Gaetz N J, 1 VRD — Granted permission to marry W 85269 Dvr Elizabeth Jane Lonsson on or after 18 Aug 45 (Auth: CMHQ/1000:110a d/20 Jun 45)

D 129076 (3) Pte Royston G D, HQ — Granted permission to marry ON 79417 W.R.E.N. Elizabeth Shields, on or after 1 August 45 (Auth: CMHQ/1000:110a d/ 19 June 45)

(OVER)

15. PERMISSION TO MARRY (Cont'd)

A 59823 (4) Pte Steeper O A, 1 VRD — Granted permission to marry Miss Joan Walter on or after 15 Aug 45 (Auth: CMHQ/1000:110a d/19 Jun 45)

16. MARRIAGES, BIRTHS & DEATHS

H 40865 (1) Pte Johnston H J, 2 VRD — Married with permission to Miss Rosemary Burrows at the Parish Church of England, Witley, Surrey on the 9 Jun 45

M 15549 (2) Pte Kovac M, 4 VRD — Daughter, Irene Anne, born at Caterham, [illegible] on 14 May 45 (Mrs Ruzena Kovac (Wife))

17. GOOD CONDUCT BADGES

C 21515 (1) Pte Laderoute J A, 1 VRD — Awarded 2nd good conduct badge wef 12 Jun 45 (Auth: CA(C/S)RO 508/40)

18. HONOURS AND AWARDS

A 106154 (1) Pte Grant N G, 1 VRD — Awarded the Cdn Volunteer Service Medal & Clasp wef 17 Aug 44 (Auth: CA(C/S)RO 4167)

19. POSTINGS INTER UNIT

M 65448 (1) Pte Lemp J, 1 VRD — Posted from Gd Increment to Veh Coy wef 15 Jun 45

20. ATTACHMENTS INTER UNIT

Att to MT Coy wef 20 Jun 45

A 102117	Pte	Charron A F	H 63577	Pte	Crasler J B
B 53603	L/Cpl	Henry C M	B 1940	Pte	Hockey C R
B 111249	Pte	Lawson W H	L 110088	Pte	Sayers H P
M 105336	Pte	Haseloh G	M 104850	Pte	Sauder E
B 86376	Pte	Hatch H	B 97536	Pte	Howe W H
F 49805	Pte	Lauretto N J	C 121809	Pte	Marchildon W
D 166933	Pte	Steinberg I	L 19226	Pte	Krahenbil P P
E 29349	Pte	Beaulieu R	C 4150	Pte	Lott W C
B 155750	Pte	Leger A J	M 61628	Pte	Unger H
E 100728	Pte	Boland R	H 21092	Pte	Anderson R R
D 142857	Pte	Prezeau G A	D 167243	Pte	Schlepack I
B 9315 (1)	Pte	Baird M D, 2 VRD	A 3206	Pte	Smith H F

A 64750 (2) Pte Hicklin R, HQ — Att to 4 VRD wef 19 Jun 45

D 143198 Pte St Georges J P
B 146603 Pte Roppel E W
(3) 2 VRD — Att to HQ wef 19 Jun 45

21. STRENGTH DECREASE

B 35035 (1) L/Cpl Armstrong H S, 4 VRD (Veh Coy) — SOS to 130 CD MD 2 wef 22 Jun 45 (Auth: CMHQ/R4/1748 d/20 Jun 45)

G 59017 (2) Pte Daigle N, 2 VRD (Veh Coy) — SOS to Y3 List 1 CONEXU wef 19 Jun 45 on adm to 22 Cdn Gen Hosp

(OVER)

21. STRENGTH DECREASE (Cont'd)

SOS to 70 CD MD 1 wef 22 Jun 45 (Auth: CMHQ/R4/1741 d/20 Jun 45)

A 232	Sgt	Baker G F	MT Coy	Stmn "C"	MT Coy
D 129464	Pte	Dally H	Veh Coy		1 VRD
A 108704	Pte	Day A	Veh Coy		1 VRD
A 55300	Pte	Dicks F	Veh Coy		1 VRD
A 62099	Pte	Lawless W J	Veh Coy	Stmn "C"	1VRD
A 27028	Pte	Leader B R	MT Coy		MT Coy
A 57398	Cpl	Neish W J	MT Coy	Stmn "C"	MT Coy

(3)

SOS to 111 CD MD 2 wef 22 Jun 45 (Auth: CMHQ/R4/1659 d/20 Jun 45)

B 87587	Pte	Bonar V	Veh Coy		4 VRD
B 58988	L/Cpl	Carter C J	Veh Coy		1 VRD
B 89403	Pte	Henderson W J	Veh Coy		1 VRD
B 158561	Pte	Watson P A	Veh Coy		4 VRD

(4)

SOS to 116 CD MD 6 wef 22 Jun 45 (Auth: CMHQ/R4/1578 d/20 Jun 45)

F 64616	L/Cpl	Casey B E	Veh Coy	Cook "B"	4 VRD
F 89339	Pte	Curry F N	Veh Coy		2 VRD
F 89624	L/Cpl	Gow B J R	Veh Coy		HQ
F 96188	Cfn	Harding F A (RCEME)	Veh Coy	Panel Beater "B"	2 VRD
F 52008	Pte	Langley J T	Veh Coy		1 VRD
F 30901	A/Sgt	Olding G C W(RCEME)	Veh Coy	Dvr Mech MV"C"	2 VRD
F 86658	Cfn	Selig H R (RCEME)	Veh Coy	Veh Mech MV "B"	2 VRD
F 31217	Pte	Smith G L	BR Coy		BR Coy
F 66549	Cfn	Trask W A (RCEME)	Veh Coy	Dvr Mech MV "C"	2 VRD
F 84522	Pte	Whiteway J T	BR Coy		BR Coy

(5)

SOS to 119 CD MD 11 wef 22 Jun 45 (Auth: CMHQ/R4/1599 d/20 Jun 45)

K 16403	Pte	Chalmers K P B(RCEME)	Veh Coy		1 VRD
K 48333	Cfn	McLay W F (RCEME)	Veh Coy	Dvr Mech MV "C"	4 VRD
K 98373	Cpl	Reimer M C (RCEME)	Veh Coy	Veh Mech MV "A"	4 VRD
K 1500	Cfn	Shevon L (RCEME)	Veh Coy	Panel Beater "C"	2 VRD

(6)

SOS to 114 CD MD 4 wef 22 Jun 45 (Auth: CMHQ/R4/1563 d/20 Jun 45

D 139842	Pte	Crichton J D	Veh Coy		2 VRD
D 137235	Pte	Flynn A L	Veh Coy		2 VRD
D 166620	Pte	Griffiths F H	Veh Coy	Dvr Mech MV "C"	2 VRD
D 96424	A/Cpl	Littleton D E (RCEME)	Veh Coy	Veh Mech MV "C"	2 VRD
D 92756	Sgt	Poirier A (RCEME)	Veh Coy	Stmn "C"	1 VRD
D 129750	A/Cpl	Powers W D (RCEME)	Veh Coy	Dvr Mech MV "C"	2 VRD
D 128675	Cfn	Tremblay F (RCEME)	Veh Coy	Fitter "C"	4 VRD
D 129496	Cfn	Wilders G A (RCEME)	Veh Coy	Stmn "C"	4 VRD

(7)

SOS to 121 CD MD 13 wef 22 Jun 45 (Auth: CMHQ/R4/1699 d/20 Jun 45)

M 100429	Cpl	Dawson R K (RCEME)	Veh Coy	Veh Mech AFV "A"	4 VRD
M 17125	Cfn	Drinnan W H (RCEME)	Veh Coy	Veh Mech AFV "B"	4 VRD
M 50598	L/Cpl	Elgie W J	Veh Coy		2 VRD
M 65378	Cfn	Rossman R M (RCEME)	Veh Coy	Dvr Mech MV "C"	4 VRD

(8)

(OVER)

21. STRENGTH DECREASE (Cont'd)

SOS to 126 CD MD 11 wef 22 Jun 45 (Auth: CMHQ/R4/1698 d/20 Jun 45)

A 67	Sgt	Dunn A F	Veh Coy		4 VRD
K 62936	Pte	Sinclair G	Veh Coy		2 VRD
(9)					

SOS to 120 CD MD 12 wef 22 Jun 45 (Auth: CMHQ/R4/1630 d/20 Jun 45)

M 101313	Pte	Gauthier D E	HQ		HQ
L 25709	Cpl	L'Heureux W (RCEME)	Veh Coy	Dvr Mech MV "C"	4 VRD
L 11067	Cpl	Marlowe H (RCEME)	Veh Coy	Veh Mech MV "B"	4 VRD
L 7839	Pte	Merrick S B	Veh Coy		2 VRD
L 110039	Pte	Olson L J	Veh Coy		HQ
(10)					

SOS to 112 CD MD 3 wef 22 Jun 45 (Auth: CMHQ/R4/1536 d/20 June 45)

C 15627	A/Sgt	Harris W F	Veh Coy	Clerk "C"	4 VRD
C 32635	Pte	Miller S	Veh Coy		2 VRD
B 9362	A/Sgt(Unpd)	McGeehan M	MT Coy		MT Coy
C 94873	Cfn	McGale T R (RCEME)	Veh Coy	Veh Mech MV "B"	2 VRD
(11)					

M 60314 Pte Klinkhammer F J L — SOS to 121 CD MD 13 wef 22 Jun 45 (Auth: CMHQ/R4/1711 d/20 Jun 45)
(12) 1 VRD (Stmn"C")(Veh Coy)

E 14396 Pte Masson P E J L — SOS to Y3 List 1 COMZRU wef 18 Jun 45 on adm to 22 Cdn Gen Hosp
(13) 2 VRD (Veh Coy)

B 56939 L/Cpl McCraney G K (Veh Coy) — SOS to 1 Cdn Repat Depot wef 18 Jun 45 (Auth: CMHQ/AT 3018 (AG2B) d/15 Jun 45 Dispensor AG 5647)
(14) 2 VRD

H 100542 Cfn Morrissette H R (RCEME) — SOS to 118 CD MD 10 wef 22 Jun 45 (Auth: CMHQ/R4/1692 d/20 Jun 45)
(15) 4 VRD (Veh Mech MV "B")(Veh Coy)

F 97893 Cfn Nicholson A B (RCEME) — SOS to 116 CD MD 6 wef 22 Jun 45 (Auth: CMHQ/R4/1679 d/20 Jun 45)
(16) 1 VRD (Dvr Mech MV "C")(Veh Coy)

L 107535 Pte Simpson G H (Veh Coy) 1 VRD
L 12381 A/Sgt McWilliams G D(Veh Coy)2 VRD — SOS to 120 CD MD 12 wef 22 Jun 45 (Auth: CMHQ/R4/1703 d/20 Jun 45)
(17)

K 47741 Pte Soles J E (Veh Coy) — SOS to 119 CD MD 11 wef 22 Jun 45 (Auth: CMHQ/R4/1613 d/20 Jun 45)
(18) HQ (Cook "B")

A 11365 Pte Winch C (Veh Coy) — SOS to 70 CD MD 1 wef 22 Jun 45 (Auth: CMHQ/R4/1647 d/20 Jun 45)
(19) 2 VRD

SOS to 111 CD MD 2 wef 22 Jun 45 (Auth: CMHQ/R4/1512 d/20 Jun 45)

B 89406	Cpl	Bush W F M RCEME	HQ	Cook "B"	
A 54945	Cpl	[illegible]	Veh Coy	Veh Mech MV "B"	4 VRD
[illegible]				Cook "C"	1 VRD
(20)				Fitter "C"	HQ
(21)					1 VRD

B 17002 Sgt Clarke F A
(21) A/Cpl Beaulieu A (RCEME) Gd Inor Veh Coy — Veh Mech MV "A" — MT Coy 1 VRD

(OVER)

21. STRENGTH DECREASE (Cont'd)

SOS to 126 CD MD 11 wef 22 Jun 45 (Auth: CMHQ/R4/1698 d/20 Jun 45)

A 67	Sgt	Dunn A F	Veh Coy		4 VRD
K 62936	Pte	Sinclair G	Veh Coy		2 VRD
(9)					

SOS to 120 CD MD 12 wef 22 Jun 45 (Auth: CMHQ/R4/1630 d/20 Jun 45)

M 101313	Pte	Gauthier D E	HQ		HQ
L 25709	Cpl	L'Heureux W (RCEME)	Veh Coy	Dvr Mech MV "C"	4 VRD
L 11067	Cpl	Marlowe N (RCEME)	Veh Coy	Veh Mech MV "B"	4 VRD
L 7839	Pte	Merrick S B	Veh Coy		2 VRD
L 110039	Pte	Olson L J	Veh Coy		HQ
(10)					

SOS to 112 CD MD 3 wef 22 Jun 45 (Auth: CMHQ/R4/1536 d/20 June 45)

C 15627	A/Sgt	Harris W F	Veh Coy	Clerk "C"	4 VRD
C 32635	Pte	Miller S	Veh Coy		2 VRD
B 9362	A/Sgt(Unpd)	McGeehan M	MT Coy		MT Coy
C 94873	Cfn	McGale T R (RCEME)	Veh Coy	Veh Mech MV "B"	2 VRD
(11)					

M 60314 Pte Klinkhammer F J L SOS to 121 CD MD 13 wef 22 Jun 45 (Auth: (12) 1 VRD (Stmn"C")(Veh Coy) CMHQ/R4/1711 d/20 Jun 45)

E 14396 Pte Masson P E J L SOS to Y3 List 1 COMERU wef 18 Jun 45 on (13) 2 VRD (Veh Coy) adm to 22 Cdn Gen Hosp

B 56939 L/Cpl McCraney G K (Veh SOS to 1 Cdn Repat Depot wef 18 Jun 45 (14) 2 VRD Coy) (Auth: CMHQ/AT 3018 (AG2B) d/13 Jun 45 Dispensor AG 5647)

H 100542 Cfn Morrissette H R (RCEME) SOS to 118 CD MD 10 wef 22 Jun (15) 4 VRD (Veh Mech MV "B")(Veh Coy) 45 (Auth: CMHQ/R4/1692 d/20 Jun 45)

F 97893 Cfn Nicholson A B (RCEME) SOS to 116 CD MD 6 wef 22 Jun (16) 1 VRD (Dvr Mech MV "C")(Veh Coy) 45 (Auth: CMHQ/R4/1679 d/20 Jun 45)

L 107535 Pte Simpson G H (Veh Coy) 1 VRD SOS to 120 CD MD 12 wef 22 Jun
L 12561 A/Sgt McWilliams G D(Veh Coy)2 VRD 45 (Auth: CMHQ/R4/1703 d/20 Jun
(17) 45)

K 47741 Pte Soles J E (Veh Coy) SOS to 119 CD MD 11 wef 22 Jun 45 (Auth:
(18) HQ (Cook "B") CMHQ/R4/1613 d/20 Jun 45)

A 11365 Pte Winch C (Veh Coy) SOS to 70 CD MD 1 wef 22 Jun 45 (Auth:
(19) 2 VRD CMHQ/R4/1647 d/20 Jun 45)

SOS to 111 CD MD 2 wef 22 Jun 45 (Auth: CMHQ/R4/1009 d/18 Jun 45)

B 89406	Cpl	Bush W O	Veh Coy	Cook "B"	4 VRD
A 54945	Cfn	Crerar R H (RCEME)	Veh Coy	Veh Mech MV "B"	1 VRD
B 110870	Pte	Kilgour W B	HQ	Cook "C"	HQ
A 59245	Cfn	McLaughlin F M RCEME	Veh Coy	Fitter "C"	1 VRD
(20)					

SOS to 115 CD MD 5 wef 22 Jun 45 (Auth: CMHQ/R4/1512 d/20 Jun 45)

E 0221	Sgt	Clarke F A	Gd Incr		MT Coy
E 17002	A/Cpl	Beaulieu A (RCEME)	Veh Coy	Veh Mech MV "A"	1 VRD
(21)					

(OVER)

21. STRENGTH DECREASE (Cont'd)

SOS to 117 CD MD 7 wef 22 Jun 45 (Auth: CMHQ/R4/1439 d/20 Jun 45)

G 49507	Sgt	Cormier P F	RCEME	Veh Coy	Veh Mech AFV "B"	1 VRD
G 19329	Cfn	Fullerton N J	RCEME	Veh Coy	Dvr Mech MV "C"	4 VRD
G 24037	Cfn	McLellan J D	RCEME	Veh Coy	Veh Mech MV "B"	4 VRD

(22)

D 62951	Pte	Desormeaux A	(Veh HQ	Coy)	SOS to 1 Cdn Repat Depot wef 21 Jun 45 (Auth: 408/XUK/1/2 d/5 Sep 44)

(23)

SOS to 114 CD MD 4 wef 22 Jun 45 (Auth: CMHQ/R4/1102 d/18 Jun 45)

D 129090	Cfn	Hardie J C	RCEME	Veh Coy	Veh Mech AFV "B"	4 VRD
D 129292	Cpl	Lewis J J W	RCEME	Veh Coy	Veh Mech MV "C"	4 VRD
D 132832	Cfn	Maitland D	RCEME	Veh Coy	Dvr Mech(Tank)"C"	4 VRD
D 128711	Cfn	Pinkard W R H	RCEME	Veh Coy	Fitter "C"	4 VRD

(24)

SOS to 118 CD MD 10 wef 22 Jun 45 (Auth: CMHQ/R4/1468 d/20 Jun 45)

H 9630	Cpl	Jacobs J F	RCEME	Veh Coy	Veh Mech MV "B"	2 VRD
H 64753	Pte	Hodgson R E		HQ		HQ
H 37111	Cfn	Snell T S	RCEME	Veh Coy	Dvr Mech MV "C"	2 VRD
H 39245	Cfn	Montigny F	RCEME	Veh Coy	Fitter "A"	4 VRD

(25)

SOS to 122 CD MD 2 wef 22 Jun 45 (Auth: CMHQ/R4/1460 d/20 Jun 45)

B 52725	Pte	Kay A C		Veh Coy		2 VRD
B 142005	Pte	Shatkosky J		Veh Coy		2 VRD
B 566	Pte	Braithwaite S		Veh Coy	Dvr Mech MV "C"	2 VRD
B 89548	L/Cpl	Cornish T J		Veh Coy		1 VRD
B 160780	Pte	Ellery T		Veh Coy		2 VRD
B 160205	Pte	Liretto E E		Veh Coy		2 VRD
B 53139	Cpl	Case N I	RCEME	Veh Coy	Veh Mech MV "A"	2 VRD
B 3863	Sgt	Carley S M	RCEME	Veh Coy	Veh Mech MV "C"	2 VRD
B 19009	Cpl	Turner W E	RCEME	Veh Coy	Veh Mech MV "B"	2 VRD

(26)

SOS to 111 CD MD 2 wef 22 Jun 45 (Auth: CMHQ/R4/1052 d/18 Jun 45)

B 2436	Cfn	Keates C H	RCEME	Veh Coy	Veh Mech MV "B"	2 VRD

(27)

SOS to 119 CD MD 11 wef 22 Jun 45 (Auth: CMHQ/R4/1160 d/18 Jun 45)

K 57155	S/Sgt	Metcalfe S		Veh Coy	Fmn Dept'l "B" 4 VRD

(28)

SOS to 121 CD MD 13 wef 22 Jun 45 (Auth: CMHQ/R4/1176 d/19 Jun 45)

M 36609	Cfn	Metge W F	RCEME	Veh Coy	Veh Mech MV "A"	2 VRD

(29) 2 VRD

SOS to 130 CD MD 2 wef 22 Jun 45 (Auth: CMHQ/R4/1491 d/20 Jun 45)

B 4481	Sgt	Morris H R	RCEME	Veh Coy	Veh Mech AFV "B"	4 VRD
D 121568	Cfn	Roy G	RCEME	Veh Coy	Dvr Mech MV "C"	2 VRD
B 112293	A/Cpl	Maybin J	RCEME	Veh Coy	Dvr Mech MV "C"	4 VRD
B 77557	Cfn	Riley J	RCEME	Veh Coy	Turner "B"	4 VRD
B 1841	Cfn	Gray J J	RCEME	Veh Coy	Fitter "C"	4 VRD

(Continued on Next Page)

21. STRENGTH DECREASE (Cont'd)

(Continued from Previous Page)

C 34508	Cfn	Yeo A P	RCEME	Veh Coy	Veh Mech MV "B"	4 VRD
B 58222	Cfn	McFarland J W	RCEME	Veh Coy	Veh Mech MV "B"	4 VRD
B 6264	Cfn	Noble W	RCEME	Veh Coy	Dvr Mech MV "C"	1 VRD
B 36901	Cfn	McLennan A R	RCEME	Veh Coy	Dvr Mech MV "C"	1 VRD
(30)						

SOS to 70 CD MD 1 wef 22 Jun 45 (Auth: CMHQ/R4/1409 d/20 Jun 45)

P 28079	Sgt	Smith J C		Veh Coy	Stmn "C"	2 VRD
A 86642	Pte	Bevan E		Veh Coy		MT Coy
A 116378	Pte	French F N		Veh Coy		4 VRD
A 29340	Sgt	MacDougall A D	RCEME	Veh Coy	Veh Mech MV "B"	1 VRD
A 59378	Cfn	Novakowski J K	RCEME	Veh Coy	Veh Mech MV "A"	4 VRD
(31)						

SOS to 118 CD MD 10 wef 22 Jun 45 (Auth: CMHQ/R4/1164 d/18 Jun 45)

H 63582	Cfn	Sutton F	RCEME	Veh Coy	Veh Mech MV "B"	2 VRD
(32)						

SOS to 119 CD MD 11 wef 22 Jun 45 (Auth: CMHQ/R4/1313 d/19 Jun 45)

K 45008	Cfn	Van Horlick B A	RCEME	Veh Coy	Fitter "B"	HQ
(33)						

SOS to 113 CD MD 3A wef 22 Jun 45 (Auth: CMHQ/R4/1516 d/20 Jun 45)

C 43070	Pte	Wernham G H		Veh Coy		2 VRD
C 667	Cpl	Gifford H L		Veh Coy	Stmn "C"	HQ
C 52800	Pte	Tye W A		Veh Coy		2 VRD
(34)						

H E Thorne Hood

for (R.J.Henderson) Brigadier
Commandant, 1 Cdn Central Ord Depot

DJBL/

Certificate in accordance with Army Act 163(1) (ii)

I certify that No. B/77563 Rank Pte. Name HYSREE. H.

Unit No.2. V.H.D. 1st C.O.D. Royal Canadian Ordnance Corps.

was arrested at Blackpool. at 1445 on 8th August/45.

and at the time of his arrest he was wearing XXXX XX XXXXXX XXXXX Civilian Clothes.

Signature of Provost Marshal, A.P.M. or other Officer into whose custody the above named person was taken into arrest.

Adjutant.

Officer i/c C.M.Police Blackpool.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
E.77563	Pte	Eyerse H.E.	1 VRD, 1 CCOD, RCOC.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence as the case may be, should be stated separately. Any recorded special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA Sec 9(2) 5 times.

For AA Sec 11 2 times.

For AA Sec 15(1) 7 times.

For AA Sec 40 2 times.

Date of first entry in Field Conduct Sheet 18 June 1943

Date of last entry in Field Conduct Sheet 1 June 1945

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. ~~The accused at the present time is under sentence for~~ Ket

beginning on the Ket day of Ket

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for ~~20~~ Nun 22 days in military custody, *i.e.*, NIL days in open arrest, ~~20~~ Nun 22 days in close arrest; of which 7 days were spent in hospital.

5. The present age of the accused is 21 yrs 4 mos 20 days

6. The date of his ~~attestation~~ enlistment is 4 Nov 42

~~enlistment~~ Ket

7. The service which the accused is allowed to reckon is 2 yrs 9 mos 24 days

†State the military decorations (if any) held by accused.

8. The accused is in possession of: CVSM & Clasp ICC&GRU DO 263 8/28 Oct 44

Ket ~~If the accused is a warrant officer or N.C.O.:~~ The accused has served satisfactorily without reduction, to the present date Ket Ket date of promotion.

~~In the substantive rank of~~ Ket

~~In the war substantive rank of~~ Ket

~~In the acting rank of~~ Ket

EXB

Mc

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(20084) Wt.42129/4099 42,000 11/44 A.S.E.W.Ltd. Gp.693 Forms/T.2 6/W/913

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

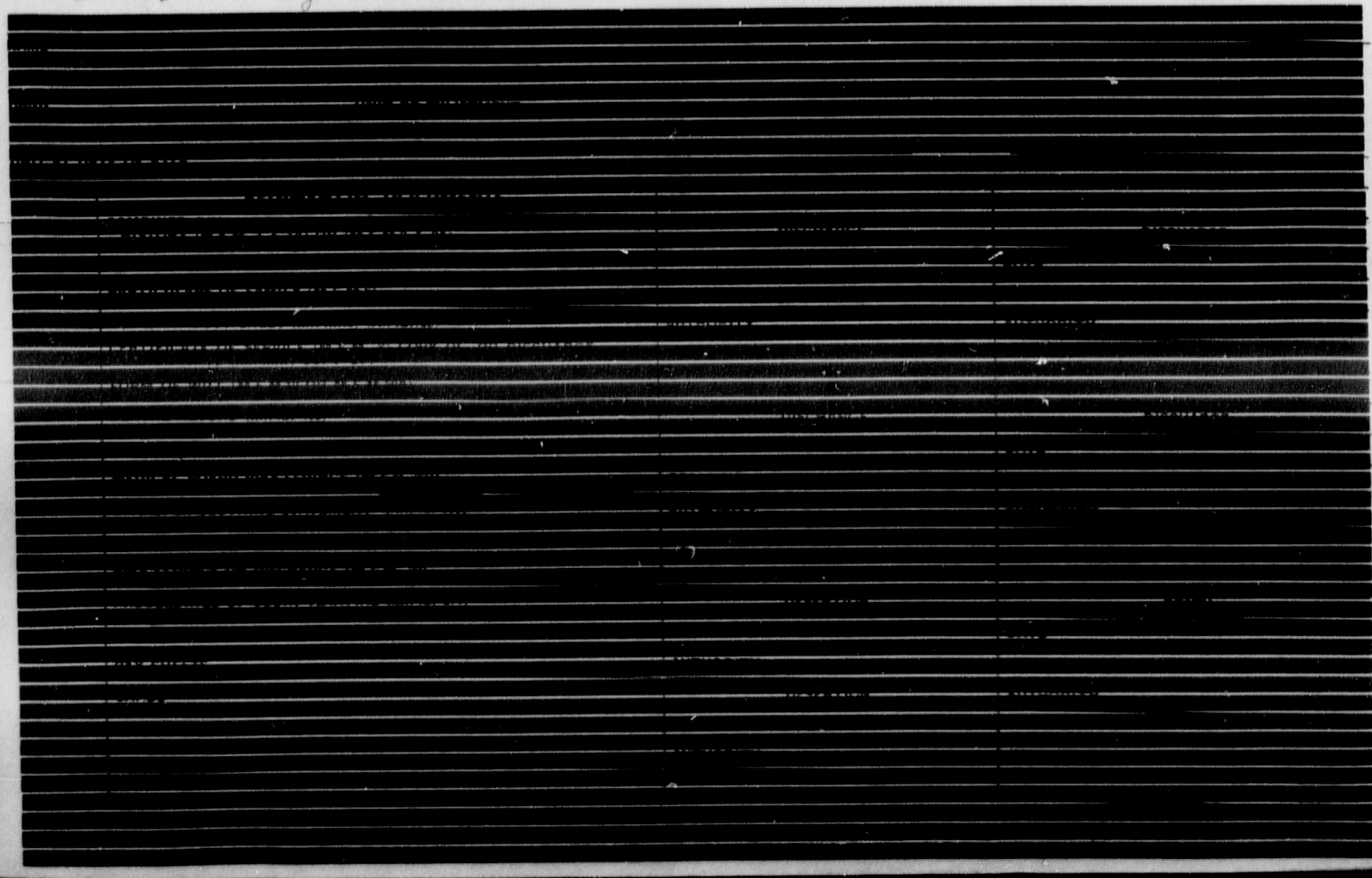
Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
F.G.C.M.	26 Jan 45	A.A. Sec 15(1) AWL 26 days 13 hrs 10 mins	50 days detn	15 days remittance

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 30th day of Aug 1945

H.E. Thorne Lt.

SZ-26 Pile. Pyerse H.S.



4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B.77563 Pte Harold Eugene HYPESE

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st CA Sec 15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for 150 DAYS beginning on (date) 30 AUG 45 (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 82 days, of which 9 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of nine (9) months.

(Sgd) ..... Judge-Advocate, if any. 27 FEB 46 Date awarded. (Sgd) [signature] President. (RP 45, 50.) Lt. Col.
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks further than [illegible]~~ (1)
(1. AA 57A. Delete if not used.)

Date 28 Feb 46 (Sgd) N Blackader (K.G. BLACKADER, BRIG COMD CBU) Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B 77563 Pte H.E. Hyperse	2 March 46	[signature]

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

5Z-26

FIELD GENERAL COURT-MARTIAL

CFA26 (In lieu of AFA81) 40/P & B/1009 (6144) 4/38B

Convened by Order of ..... Comd ..... dated 26 Feb 46

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.77563	Pte	Harold Eugene	HYPESE	No 1 Cdn Repat Dep

PROCEEDINGS REVIEWED
21 Mar 46 C.A. Court Mag.
REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 27 Feb 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation on this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AB5. For notes and instrs on how to record witness' evidence, ~~and on how to record addresses, rulings, etc.~~ which are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1145 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ..... as interpreter?~~ Ans .....
~~The Interpreter is sworn.~~(1) Do you object to F/10C409 Sgt O'Neill J as shorthand writer? Ans NO SIR
The shorthand writer is sworn.(2)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans NO SIR(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	G.E. Woodrow, OBE ED	MD CBU
Member	Capt	F.M. PRITCHARD	1 Cdn Repat Dep
Member	Lieut	J.F.W. COLLINSON	1 Cdn Repat Dep
~~Judge-Advocate~~			
Prosecutor	CAPT	D.D. SARVIS	1 CDN REPAT DEP
Defending Offr	LIEUT	A.J. MACDONALD	1 CDN REPAT DEP

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO.(2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when R^s (9) (B) and fn 2 were not followed. See DI p 2.)

A8. The accused ..... before arraignment make(s) (no) ~~no~~ plea(s).(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 26), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in frs to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF AB6 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)*

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO SIR (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 90(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans..... Do you intend to call witnesses on your behalf ?
Ans....., Are they witnesses as to character only ? Ans.....
(1. *RP 115.* 2. *RP 40(A), see 85(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (c), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO SIR
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB 255 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. regarding opening plea in mitigation attached (2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 504.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Old

CHARGE SHEET

The Accused, B77563 Pte Harold Eugene HYERSE, RCOC, on the strength of No 4 (Gen Rft) Wing, No 1 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE — WHEN ON ACTIVE SERVICE

SECTION 15 (1) — ABSENTING HIMSELF WITHOUT LEAVE

ARMY ACT — in that he,

in the Field, absented himself without leave while held in custody at 1130 hrs 26 Sep 45, until apprehended at 0001 hrs 7 Dec 45.

Absent: 71 days, 12 hrs, 31 mins.

Lt. B.K. Gordon, Pte

Commanding Officer
No 1 Cdn Repat Depot
(Lorne Scots)
Cdn Army Overseas

Field,

14 Feb 46

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

IN THE FIELD
26 Feb 46

K.G. Blackader

(K.G. Blackader), Brig
Commanding
Canadian Repatriation Units

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy: AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-77563	Pte		Harold Eugene	RYERSE	1 Cdn Repat Depot

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(~~s~~) attached and on (date) 26 Feb 46 endorsed by me, (~~an offr of my staff for me~~), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior authority or~~)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

(Delete part in brackets when not required for compliance with RP 105(C).)

4. ~~Principals to appear before the Court.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~Orders appointing the Judge Advocate and the Officers detailed hereunder.~~

(RP 106(E). Delete, if none appointed.)

Lt.-Col — PRESIDENT.
(Rank.)

C.E. Woodrow, O.B.E., E.D.
(Must be named. RP 106.)

Captain — MEMBERS. — HQ CRU
(Rank.) (Unit.)

Lieut — to be detailed from — 1 Cdn Repat Depot
(Rank.)

(Named or detailed. RP 106.)

~~VACANCY NUMBER.~~ — 1 Cdn Repat Depot
(Rank.) (Unit.)

(Named or detailed, if any. RP 106.)

~~JUDGE ADVOCATE.~~
(Rank.) (Unit.)

(Must be named, if any. RP 106.)

On Active Service in the Fd
in England
(Country.)

Dat 26 Feb 46

(Unit.)

Signed W. Blackader.
(Signed personally. RP 105 fn 2.)
(W. G. Blackader) Brigadier
(Rank.)
Commanding Canadian Repatriation Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

B 77563 S.A.T. RYERSE H.E.

27 Feb. 1946.

Plea attached at F3

Plea in Mitigation

B77563 Pte Ryerse H. E. R.C.O.C.

Enlisted Nov 1942 in R.C.O.C.

England May 1944. Att served with

C.C.O.D. as a driver, until arrested

for his last absence. He escaped from

this camp for the sole purpose

of marrying his fiancée. He could

not resist.

Now his one wish is to get these

absences settled, serve his sentence

and ~~~~ marry his fiancée

Exhibit "A"

SUMMARY OF EVIDENCE

in the case of,

B77563 Pte Harold Eugene RYERSE, RCOC, on the strength of No 4 (Gen Hft) Wing, No 1 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas.

"I produce the following documents, pursuant to Overseas Routine Order No 5352, which have been read over and shown to the Accused, and which are attached hereto as Exhibits:"

(1) Certified True Copy of the Declaration of a Court of Inquiry held 20 Oct 45, which declares that B77563 SUS Ryerse H. E. absented himself without leave at 1130 hrs 26 Sep 45 and to be deficient in kit in the amount of $17.17.
(Marked Exhibit "A")

(2) Certified True Extract from the "Y" List, No 1 Canadian General Reinforcement Unit Part II Order No 6 dated 10 Feb 46, which declares in Section "B", Para 1, sub-para (n) that B77563 Pte Ryerse, H. E. was apprehended from desertion at 0001 hrs 7 Dec 45.
(Marked Exhibit "B")

.....C. E. Ennis.....
(C.E. Ennis) Lieut RCA
Officer detailed to take
the Summary of Evidence

THE ACCUSED WAS CAUTIONED AS FOLLOWS:

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The Accused reserves his defence.

The Accused does not call any witnesses.

"I certify that the above Summary of Evidence, consisting of one page, was taken down by me in the presence and hearing of the Accused, and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with."

.....C. E. Ennis.....
(C.E. Ennis) Lieut RCA
Officer detailed to take
the Summary of Evidence

Field,

..27..Feb 46

Exhibit "A"

RECORD of the Declaration of a Court of Inquiry assembled at Alton, Hants on the 20th day of October 1945, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B-77563 SUS Ryerse, H. E.

DECLARATION

The Court declare that No. B-77563 SUS Ryerse, H. E. a soldier under Sentence at No. 5 Cdn Mil Pris & Detn Bks (B) illegally absented himself without leave No. 5 Cdn Mil Pris & Detn Bks (B) at 1130 hours on the 26th day of September, 1945; that he is still so absent, and that on the 20th October, 1945 he was deficient, and that he is still deficient of the following articles :—

ARTICLES			VALUE		ARTICLES		VALUE	
Boots, Ankle	pr	1	4	35				
Beret khaki		1		90				
Drawers cell, short	pr	1		33				
Shirt khaki with collar		1	1	80				
Socks, woollen	prl	1		35				
Badges, cap		1		07				
Braces	pr	1		21				
Brushes clothes		1		36				
Brush hair		1		25				
Comb hair		1		05				
Spoon, table, NS		1		07				
Jersey pullover		1	1	35				
Tin mess, rect	set	1		24				
Steel Helmet		1	2	71				
Towel hand		1		25				
Denim, blouse		1	1	98				
Denim, trousers		1	1	89				
TOTAL			$ 17	17				

W.A.Prest President
(W.A.Prest)Lieut.(C.Pro C).

A.W.Hay Member
(A.W.Hay)Lieut. CIC.

C.C.Thorold RCN Member
(C.C.Thorold)RCN(SO.1) E-55520.

Signed at Alton, Hants.

this 20th day of October, 1945

Signature of Commanding Officer (W.O.Rochon)Lieut-Colonel, Commandant, No.5 Cdn Mil Pris & Detn Bks (B).

Certified true copy (W.O.Preslin)Captain,
Signature of Officer having custody of original record
No.5 Cdn Mil Pris & Detn Bks(B).

3/60B MFB 375-AFB 115
40.P&S.392 (6610)

Exhibit "B"

"Y" LIST

LAST ORDER NO. 5 21 JAN 46

NO. 1 CANADIAN GENERAL REINFORCEMENT UNIT
PART II ORDERS
ISSUED BY
COL. R.C. CLARK, DSO, COMMANDER

THIS ORDER NO. 6 10 FEB 46

SECTION "B" OTHER RANKS

1. STRENGTH INCREASE

(n) Apprehended from desertion at 0001 hrs 7 Dec 45 and T.O.S. Y-2 List wef 7 Dec 45.

B-77563 PTE. RYERSE, H.E.

"J.H.STEPHEN" Capt
for (R.C. CLARK) COLONEL
COMMANDER
NO. 1 CDN GEN RFT UNIT.

CERTIFIED TRUE EXTRACT FROM ORIGINAL DOCUMENT HELD IN MY POSSESSION.

18 Feb 46

C.E. Ennis
(C.E. ENNIS) Lieut, RCA,
Officer having custody
of original document.

/AJM

Exhibit "B"

ARMY FORM B 206.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
B77563	Pte	RYERSE, H.E.	1 Cdn Repat Depot

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not inserted in the proceedings.

† See para. 877, K.R., 1940.

* The numbers herein stated should correspond with the numbers of entries in the conduct sheet(s) produced, the nature of the offence being given in the latest instance of each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AA Sec 15 (1)	times 7	times.
For AA Sec 15 (2)	times 3	times.
For AA Sec 35	times 1	times.
[illegible]	times 2	times.
For AA Sec 9 (2)	times 2	times.
AA Sec 11	times 2	times.

Number of instances of gallantry or distinguished conduct. Nil

or

There are no entries in the conduct sheets of the accused. Nil

2. The accused has not been previously convicted, as Nil

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement. Nil.

3. The accused is not under sentence at the present time. or The accused at the present time is under sentence of imprisonment for 150 days beginning on the 30 Aug 45 Nil

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 82 days in military custody, making a total of 82 days, of which 4 days were spent in hospital.

5. The present age of the accused according to his record of service / attestation paper is 21 yrs 10 mos

6. The date of his commission / attestation specified in his record of service / attestation paper is 4 Nov 42

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is Nil

8. The accused is entitled to deferred pay or gratuity in respect of Nil service.

9. The accused is entitled to reckon Nil service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award. Nil is in possession of or entitled to (*state any military decoration or reward*). CVSM & Clasp

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of Nil

12. (*In the case of an officer.*) The accused holds in the army the rank of Nil dated Nil and in his regiment (or corps or department) the rank of Nil dated Nil

(P16548) Wt.30246/502 75,000 12/40 A.& E.W.Ltd. Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B77563 Rank Pte Name VERSE H.E. of 1 Cdn Repat ~~Regiment~~ (or as the case may be).

(INSTRUCTION.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charge upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
FGCM	26 Jan 45	AA Sec 15(1) AWL 26 days 13 hrs	50 days detn	15 days remission
FGCM	30 Aug 45	AA Sec 15(1) AWL 5 3 days 14 hrs 46 min	150 days detention	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 27 day of Feb. 46

C. E. Ennis, Capt RCAF
Legal Officer
for Officer Cdg 1 Cdn Repat Depot

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date as follows:—

In the rank of ..... years, ... Date of Promotion.

In the rank of ..... years, ...

In the rank of ..... years, ...

(INSTRUCTIONS.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph(s) concerned amended accordingly.*)

THE CASE OF D77563 Pte RYERSE H. E.

(i) LIST OF WITNESSES FOR PROSECUTION

Nil

(ii) LIST OF WITNESSES FOR DEFENCE

Nil

(iii) LIST OF EXHIBITS FOR PROSECUTION

(a) Certified True Copy of the Declaration of a Court of Inquiry held 20 Oct 45 concerning the absence without leave of D77563 SUS Ryerse H. E.
(Marked Exhibit "A")

(b) Certified True extract from "A" List, 1 CCRU Part II Order No. 6 d/10 Feb 46 concerning the apprehension of D77563 Pte Ryerse H.E.
(Marked Exhibit "B")

(iv) LIST OF EXHIBITS FOR DEFENCE

Nil

(v) RECEIPT BY ACCUSED FOR COPY OF CHARGE SHEET AND SUMMARY OF EVIDENCE

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence, taken in the Field, preliminary to my Court Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court Martial.

H E Ryerse
.....
(D77563 Pte Ryerse H.E.)

(vi) APPLICATION BY ACCUSED FOR DEFENDING OFFICER

I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of.....
if he is available.

H E Ryerse
.....
(D77563 Pte Ryerse H.E.)

Signed in the Field,

this 11th day of Feb 46

M.F.M. 5
(A.F.B. 122)

No. B77563 Name RYERSE H.E. | Sqn., Battery, or Company | Corps RCOC | Date of enlistment 4-11-42 | O.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 3 | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dismissing with trial	By whom awarded	Remarks
Field	16 Jun 45	Pte		AA Sec 15(1) WOAS AWL from 2359 hrs 15 Jun 45 to 1445 hrs 8 Aug 45 (Absent 53 days 14 hrs 46 mins)	Docy	150 days Detn forf 150 days pay FR&I 149 (1)(b)	30 Aug 45	FSCM	forf 54 days pay FR&I 149(1)a forf 22 days pay FR&I 149(1)(c)(i)
				CERTIFIED TRUE COPY OF ORIGINAL MFM 6 HELD IN MY POSSESSION					
				14 Feb 46 (C.E. Ennis) Lieut RCA Officer having custody of original document					

P.T.O.

M.F.M. 6

No. B77563 Name RYERSE, H.E. Sqn., Battery, or Company — Corps RCOC — Date of enlistment 4-11-42 — G.C. Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 2 — Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	24 Oct 44	Pte.		Sec.40 AA WOAS Conduct to the prejudice of good order and military discipline in that he did fail to make up his bed at reveille 24 Oct 44	Sgt Lockhart, W.L.	7 days C.B.	25 Oct 44	Capt HM Richardson	
Field	5 Nov 44	Pte		AA Sec 15(1) WOAS AWL from 2359 hrs 5 Nov 44 to 0910 hrs 6 Nov 44 (absent 9 hrs 11 mins)	Documentary	7 days C.B. 4 days Forf Pay	6 Nov.44	H.B. McIntyre Lt Col	1 days auto Forf Pay
Field	17 Nov 44	Pte		(1) AA Sec 9 WOAS Failed to report to FAP when ordered to do so. (2) AA Sec 11 WOAS Neglect to act. in that he failed to make up his bed.	Sgt Lockhart	7 days F.P. 7 days Forf Pay	18.11.44	F.T. Shoebridge Maj	

P.T.O.

M.F.M. 6
A.F.B. 177
(1939) 7-41 (1315-20)
H.Q. 1172-39-1602

No. B77563 Name RYERSE, H.E. | Sqn., Battery, or Company | Corps RCOC | Date of enlistment 4-11-42 | G.C. Badge | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	24 Oct 44	Pte.		Sec.40 AA WOAS Conduct to the prejudice of good order and military discipline in that he did fail to make up his bed at reveille 24 Oct 44	Sgt Lockhart, W.L.	7 days C.B.	25 Oct 44	Capt HM Richardson	
Field	5 Nov 44	Pte		AA Sec 15(1) WOAS AWL from 2359 hrs 5 Nov 44 to 0910 hrs 6 Nov 44 (absent 9 hrs 11 mins)	Documentary	7 days C.B. 4 days Forf Pay	6 Nov.44	H.B. McIntyre Lt Col	1 days auto Forf Pay
Field	17 Nov 44	Pte		(1) AA Sec 9 WOAS Failed to report to FAP when ordered to do so. (2) AA Sec 11 WOAS Neglect to act. in that he failed to make up his bed.	Sgt Lockhart	7 days F.P. 7 days Forf Pay	18.11.44	F.T. Shoebridge Maj	

(F.T.O.)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26 Dec 44	Pte		AA Sec 15(1) WOAS AWL from 1200 hrs 26 Dec 44 until 0110 hrs 22 Jan 45 (Absent 26 dys, 13 hrs)	Documentary	50 days Detn RELEASED FROM DETENTION BARRACK H. Down 1 Mar 45 HAVING EXPIRED. REMISSION EARNED under "RULES FOR DETENTION BARRACKS AND MILITARY PRISONS" 15 DAYS Commandant Initials /// KD ON SENTENCE	26 Jan 45	FGCM	
Field	11 Apr 45	Pte		AA Sec 11 WOAS. Did drive a WD Vehicle at an excessive rate of speed, contrary to Part 1 Orders	Documentary	FOP 10 days FR&L 149(2)	18 Apr 45	Lt. Col. AW Sanders.	
Field	1 Jun 45	Pte		AA Sec 15(1) WOAS AWL 1 day 2230 hrs 2.6.45 till 2330 3.6.45	Pte Linton S.L.	FOP 4 days FR&L 149(2)	4.6.45	Major G.P. Doty	FOP 1 day FR&L 149(1)(a)

For Record "O"

M.F.M. 6
(A.F. B.122)
40/P & /8130 (2065)

No. B.77563 Name RYERSE H.E. Sqn., Battery, or Company — Corps R.C.O.C. — Date of enlistment 4.11.42 — G.C. Badges — Service Proficiency Pay —

Date of last entry in Company Conduct Sheet 13.3.43 — No. and date of last drunk N/A — Period not reckoning towards freedom from extra fine — Sheet No. 1 — Signature O.C. Company, etc. — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				New sheet on completion of six months service 4.5.43. Old sheet destroyed 13.6.44					
Field	18-6 43	Pte.		(1) Absent from place of parade (a) AWL from 1730 hrs 18.6.43 to 0600 hrs 21.6.43 (3 days 12 hrs 30 mins)	CSM Watkins	14 days C.B.	21.6.43	Maj. J.S. Gzowski	3 days pay FR&I 149(1)
Field	2-7 43	Pte.		Absent from place of parade. (Defaulters at 2130, 0615, 0830 hrs)	Documentary	14 Days C.B.		Maj J.S. Gzowski.	
Field	6-10 43	Pte.		A.A.15(1) AWL from 0600 hrs 6.10.43 to 2000 hrs 10.11.43 (35 days 14 hrs)	CSM Oliver	28 Days Det 28 Days pay	11.11.43	Lt Col R.G. Peat	36 Dys Pay FR&L 149 (1)a
Field	18-11 43	Pte.		Whilst undergoing detention talking on parade after being duly warned A.A. 35.	Cpl. Perry	48 hrs No.1 punishment	18.11.43	Capt. W.M. MacAndrew	
Field	28-1 44	Pte.		Failing to appear at a place of parade appointed by his CO (0800 hrs parade 29-1-44).	Sgt. Fodey	5 Days C.B.	28.1.44	Major J.C. Irvine	

(P.T.O.)

Place	Date of offence	Rank	Cause of Absence	OFFENCE	Name of Witnesses	Punishment Awarded	Date of award or of order intervening with trial	By whom awarded	Remarks
Field	9-2 44	Pte.		(1) AA 15(1) AWL from 0745 hrs 9.2.44 to 1600 hrs 9.2.44(8 hrs 10 mins)(2) An act to the prejudice chewing gum on parade	Sgt Griffith Cpl. Swallow Sgt Fraser	7 days C.B.	10.2.44	Maj J.C. Irvine.	
Field	17.5. 44	Pte.		AA 15 (1) AWL from 2300 hrs 17.5.44 to 2330 hrs 17.5.44 (30 mins)	Cpl. J.J. Hutchinson	2 days F.P. 2 days pay FR&L 149 (1) (b) (c)	18.5.44	Lt Col W.J. Pingham	
Field	6 Sep 44	Pte.		AA Sec 9 (2) WOAS Failed to appear on parade when ordered to do so by his superior offr. Cpl. RA Cooke	Cpl Cooke Cpl.Turner	7 days F.P. 7 days Frof Pay	7.9.44	F.M. Hearn Lt Col.	
Field	16 Sep 44	Pte.		AA Sec 15(1) WOAS AWL from 2300 hrs 16 Sep 44 until 1720 hrs 18 Sep 44 Time absent 1 day 18 hrs 20 mins)	Documentary Cpl Pearce	14 days C.B.	19.9.44	F.M. Hearn	2 days auto forf Pay

4P-52

Pte Ryerse N.E.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-77563 Pte RYERSE, Harold Eugene - 1 COMERU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
~~2nd~~			
~~3rd~~			
~~4th~~			
~~5th~~			
~~6th~~			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for NOT beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 4 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Detention for Fifty (50) days

(Sgd) Judge Advocate, if any. Date awarded. 26 Jan 45 (Sgd) President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

Major

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further order.~~ (1) (1. AA 57A. Delete if not used.)

(Sgd) Hon Brownfield

Date 27 Jan 45 Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKED. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
B77863 Pte. Ryerse H.E.	30 JAN 45	for Capt

PROMULGATED IN 1 COMERU PT II DO. 26 DATED 31 JAN. 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AG 150 4/P.52

FIELD GENERAL COURT-MARTIAL

CPA&R (To Use) of AP A&I 40/P & R/1698 (K1&L) 4/38B

Convened by Order of Brig HON Brownfield CBE MC comd "C" Gp, CMU dated 24 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-77563	Pte	Harold Eugene	RYERSE	1 COMERU

PROCEEDINGS REVIEWED

REVIEWING OFFICER, 1 CAS BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 26 Jan 45

12 hrs

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member~~, ~~JA, if any~~, and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnm RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number hereon. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Orde, and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0905 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: Do you object to ~~Capt H.P. Barrault~~ as interpreter? Ans

The Interpreter is sworn.(1) Do you object to Capt H.P. Barrault as shorthand writer? Ans No

The shorthand writer is sworn.(1) 1 CGRU

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, ~~waiting member~~ retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any~~, and Offrs under instr, ~~if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E.M. Rivers SD Kr	HQ CRU
Member	Capt	A.A. McCabe	1 CSRU
Member	Lieut	J.D. McGuigan	1 CBRU
~~Judge Advocate~~			
Prosecutor	Major	W.P. Mashes	1 COMERU
Defending Offr	Capt	F.L. Bath	1 COMERU

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused before arraignment makes(s) (no) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Notes p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 2

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Do 26 p

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused: Do you wish to make a statement? Ans. No[5]
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.[1] The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ~~A~~, initialled and read aloud by the President.[1]
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a seperate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. ..... [1]
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.[1]
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.[1]
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. .....
Do you intend to call witnesses on your behalf? Ans. .....
Are they witnesses as to character only? Ans. .....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.[1]
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?[1]
Ans. No they have given evidence on the matter
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy (copies) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ~~B~~ and Ex ~~C~~ respectively.[3]
(1. MFB 355 or AFB 296. 2. MJM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?[1] Ans. Only that he has a good character[2]
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.[2]
(1. When several accused tried seperately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 116, 119(A), KR Can 308, 330, 563-566, Overseas RO 3019, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B-77563, Private Harold Eugene Ryerse, Royal Canadian Ordnance Corps, on strength of No.1 Canadian Ordnance and Mechanical Engineers Reinforcement Unit, a soldier of the Canadian Army Overseas is charged with,

FIRST CHARGE
SECTION 15 (1)
ARMY ACT

WHILE ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

in that he

at No. 1 C.O.M.E.R.U., Bordon, Hants, at 1200 hours on the 26th day of December 1944 absented himself without leave until reporting to No. 1 C.O.M.E.R.U. Guard Room, Bordon, Hants at 0110 hours on the 22nd day of January 1945. Total time absent - 26 days, 13 hours, 10 minutes.

Bordon, Hants.
22 Jan 45.

.....Col.,
(H.M. Bailey)
Commanding Officer
No. 1 Cdn Ord & Mech Engr Rft Unit.

To be tried by Field General Court Martial

Commanding "C" Gp, Cdn Reinforcement Units Brigadier
(Convening Officer)

Bordon, Hants

24 Jan 45

FIELD GENERAL COURT-MARTIAL

CFA66 (In lieu of AFA3)
40/P&S/1697 (5563)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptnl, A/rank or A/apptnl, if any, see AA 182, 183, fns, KR Can 300, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptnl, A/R or A/Apptnl.	Full Christian Names.	Surname.	Unit.
B-77563	Pte	Harold Eugene	RYERSE	1 COMERU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has/~~have~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) this date endorsed by me, (~~[illegible]~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~[illegible]~~

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~[illegible]~~

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~[illegible]~~

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Maj	E.M. Miller ED		HQ CRU

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by CO		1 CSEU
Lt	to be detailed by CO		1 CERU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (*Country.*)

H.W. Brownfield (*Signed personally. RP 105 fn 2.*) Brigadier (*Rank.*)

Date 24 Jan 45

Commanding "C" Gp, Cdn Rft Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

NO.1 CANADIAN ORDNANCE REINFORCEMENT UNIT 1CORU/5-2

MEDICAL CERTIFICATE

I certify that R-77563-PTE. RYERSE. H.E. has been examined by me this morning and is fit to undergo trial by Court Martial.

Date 26: JAN: 45.

R. E. Pow Capt.
Medical Officer,
No.1 Cdn. Ordnance Reinf.Unit.

PLEA IN MITIGATION

The accused No. B-77563 Private H.E. Ryerse, voluntarily enlisted in the Canadian Army in 1942 at the age of 18. After serving for 18 months in Canada he arrived in England 8 months ago. During his service abroad his record of conduct shows a few minor crimes and this occasion is the first of a serious nature.

Apart from his extreme youth, I would like the Court to hear some facts relative to this man's absence:

His category is H-3 and this only permits L of C posting. Ryerse has been both disappointed and frustrated in his efforts to get into the thick of things.

During his embarkation leave the accused had sexual relations in Canada with his girl friend, whom he had known for over a year, and as a result of this a child was born on 15 Dec 44. The constant strain placed on the accused as a result of both his category and this mix up prompted him to go absent. He was quite worried and concerned about his future wife and signed over $150.00 in Victory bonds which he had purchased out of his pay as a private to further help his country's cause. In addition he has assigned $30.00 per month to assist the mother of his child.

Despite the youth of the accused, surely these facts will satisfy the Court that Ryerse is far from irresponsible.

The accused has but two desires; first, to be posted to a theatre of war and help get the show over, and secondly to get home and marry the mother of his child.

I would ask the Court before passing sentence on this young man, to consider well his state of mind at the time he went absent. On your leniency may depend the moulding of a young mind towards a better and most useful soldier.

.....Capt
(G.E. Batho)
Defending Officer

SUMMARY OF EVIDENCE

In the case of B-77563 Pte Harold Eugene RYERSE, R.C.O.C., on strength of No. 1 Canadian Ordnance and Mechanical Engineer Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

First Witness Prosecution

F-56446 Sgt Forrest, D.A., Administrative Wing, No.1 C.O.M.E.R.U. having been duly sworn states:-

"I am F-56446 Sgt Forrest, D.A. Transport Sergeant of Administrative Wing. On 26th December 1944, B-77563 Pte Ryerse, H.E., one of the drivers under my charge was absent from his place of duty and I did report this to the C.S.M. of Administrative Wing. I recognize B-77563 Pte Ryerse, H.E."

D A Forrest
(F-56446 Sgt Forrest, D.A.)

The accused declines to cross-examine the witness.

Second Witness Prosecution

H-32034 CSM Stobie, J.R. Administrative Wing No. 1 C.O.M.E.R.U. having been duly sworn states:-

"I am H-32034 CSM Stobie, J.R., Company-Sergeant-Major of Administrative Wing.
On 26th December 1944 it was reported to me that B-77563 Pte Ryerse, H.E. was absent from duty. On further investigation I found that B-77563 Pte Ryerse, H.E. had been issued with a pass up to 1200 hours 26th December 1944, but it had not been turned in to the Unit Guard Room up to the time I checked with them at 1400 hours 26th Dec 44.
I produce Exhibit "A" - a certificate of surrender and evidence as to proper dress; Exhibit "B" Daily Part II Order No. 316 dated 2 Jan 45 on the absence of B-77563 Pte Ryerse, H.E. whom I now recognize."

J R Stobie
(H-32034 CSM Stobie, J.R.)

The accused declines to cross-examine the witness.

The accused having been duly cautioned as follows:- "Do you wish to make any statement or give evidence on Oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence".

Reserves his defence,

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence, and in the hearing of the accused and that Rules of Procedure 4 (c) (d) (e) (f) have been complied with.

W P Mosher
(Major W.P. Mosher)
Officer detailed to take down Summary of Evidence

BORDON, HANTS
22 Jan 45.

"B" OTHER RANKS

4. HOSPITAL:

Adm to #1 CMC wef dates shown.

B-80219	PTE.	FRAZER, A.C.	31 Dec 44
B-88006	"	SCOTT, J.E.	2 Jan 45
K-85507	A/SGT.	MALCOLM, D.B.	1 Jan 45

5. LEAVE OF ABSENCE:

Granted 7 days P.L. and 48 hrs leave with money allce in lieu of rations from 2 Jan 45 to 11 Jan 45. (Total entitlement-9 days).

U-1883	A/SQMS.	DEWR, F.G.	A-89566 A/SGT. FARNER, A.E.
B-76694	CSM.	HOPE, R.F.	D-187262 PTE. LOUDON, C.

Granted 7 days P.L. and 48 hrs leave with money allce in lieu of rations from 1 Jan 45 to 10 Jan 45. (Total entitlement-9 days).

L-22945	CPL.	MORRISON, R.M.

6. ABSENT WITHOUT LEAVE:

AWL from time and dates shown. Still absent at 2359 hrs 31 Dec 44.

D-91998	PTE.	BLUMGARTEN, W.	2359 hrs	18 Dec 44
D-1376	"	EMBERLEY, H.B.	1200 hrs	26 Dec 44
D-122554	"	HIBBS, W.R.	2359 hrs	17 Dec 44
B-111732	"	LONGE, J.A.	1200 hrs	26 Dec 44
B-50056	"	MacKENZIE, G.S.D.	1200 hrs	26 Dec 44
K-90040	"	NEWTON, J.	2230 hrs	30 Dec 44
A-4022	"	O'BRIEN, G.T.	1200 hrs	26 Dec 44
M-42025	"	RIPPER, L.M.	2230 hrs	30 Dec 44
B-77563	"	RYERSE, H.E.	1200 hrs	26 Dec 44
C-42280	"	SAUNDERS, C.	1200 hrs	26 Dec 44

AWL from 2230 hrs 30 Dec 44.

K-90040	PTE.	NEWTON, J.
M-42025	"	RIPPER, L.M.

7. MARRIAGES:

Married with permission to Miss Ruth Egglestone at Hayes, Middx on 23 Dec 44.

C-32502 A/SGT. PURDIE, D.F.

8. NEXT OF KIN:

Change of N-of-Kin to W-53787 Sgt. Ruth Purdie (Wife) Queen Elizabeth Camp, Chilwell, Nottingham, England.

C-32502 A/SGT. PURDIE, D.F.

9. STRENGTH DECREASE:

SOS to Y3 List on adm to #22 Gen Hosp wef 29 Dec 44.

F-1506	PTE.	CONRAD, K.S.
F-89061	"	NEARING, M.P.

SOS to Y3 List on adm to #22 Gen Hosp wef 30 Dec 44.

B-57185	PTE.	HAMLETT, L.R.	(Storeman "C") (P/E)

SOS to 1 CCOD wef 31 Dec 44. (Auth CHU 408/1 CCOD/1 (PTA) d/13 Oct 44).

B-110549	A/SGT.	MEIKLE, J.W.B.	(Clerk "C") (Quota)

Exhibit "B" - Certified true copy
22 Jan 45 (W.P.Mosher) Major

NO. 3 CANADIAN ORDNANCE AND MECHANICAL ENGINEER REINFORCEMENT UNIT
(COMPOSITE UNIT)
DAILY ORDERS PART II
Issued by
COLONEL HAROLD M. BAILEY, O.B.E., V.D.
COMMANDING OFFICER

LAST ORDER NO. 31 30 Dec 44 — THIS ORDER NO. 1 2 Jan 45

R.C.O.C. SECTION

"A" OFFICERS

1. LEAVE OF ABSENCE:

Granted 5 days P.L. with money allce in lieu of rations from 2 Jan 45 to 7 Jan 45.
H/CAPT. Charles Joseph CARROLL

Granted 7 days P.L. and 48 hrs leave with money allce in lieu of rations from 2 Jan 45 to 11 Jan 45. (Total entitlement-9 days).
LIEUT. Arthur Sims HAMILTON

"B" OTHER RANKS

1. STRENGTH INCREASE:

TOS from Y3 List on disc from #22 Gen Hosp wef 31 Dec 44.
B-110549 A/SGT. MEIKLE, J.W.B. (Clerk "C")

TOS from Y3 List on disc from #1 Spec Hosp wef 1 Jan 45.
B-111125 PTE. TADASHORE, A.

2. ATTACHED: (IN)

Att fap from #1 ROOC Band wef 1 Jan 45. (Auth CRU A-250 d/18 Dec 44).

3241180	BANDMASTER (WO I)	HICKS, B.M.			
A-99435	S/SGT.	OLDRIDGE, W.L.	G-27806	L/CPL.	ALLEN, C.C.
D-109712	L/CPL.	PLOURDE, A.	F-96328	BDSM.	ARSENAULT, T.M.
P-85547	BDSM.	BAKER, H.L.	B-69916	"	HECKETT, G.
A-57395	"	HELDON, W.J.	G-16533	"	BOURQUE, C.J.
C-63577	"	BROOKING, H.S.	A-57374	"	BROWN, E.W.
A-59994	"	BURGESS, J.K.	C-31437	GFN.	CHISLOCK, E.
B-77213	"	DOWDING, H.J.	K-70349	BDSM.	FILIGIANO, A.W.
M-102186	"	HIATT, A.C.	U-1833	"	HOLMES, K.C.A.
B-62313	"	KARTIC, L.E.	B-135866	"	KEARNE, R.G.
A-10100	"	McCURDY, L.S.	M-3663	GFN.	OULTON, L.T.
K-67313	"	PEEKEES, J.D.	B-41248	BDSM.	REGIMENT, F.K.
A-86052	"	SKINNER, J.F.	D-118657	"	SMITH, B.G.
M-60074	"	WHITE W.D.E.	B-41401	"	WILLETT, F.J.
G-41284	"	WILLIAMS, R.A.			

ATTACHED: (OUT)

Att fap (except Duty) to #4 CITR and for Duty to HQ CRU Amm Dump wef 2 Jan 45. (Auth CRU 444/Unfits/1 (PTC) 408/HQ CRU/1 452/Younghusband, G.B./1 d/27 Dec 44).
P-85381 SGT. YOUNGHUSBAND, G.B.

3. COURSES:

Proceeded on Regt'l Water Duties Crse and att fap to Army School of Hygiene, Keogh Brks., Mytchett, Nr. Aldershot wef 2 Jan 45.
B-94701 PTE. AHEARN, J.
H-10079 " GOUPIL, R.

Proceeded on P.A.D Crse and att fap to Surrey County Rescue School, Hillfield, Leatherhead, Surrey wef 31 Dec 44.
D-10803 PTE. McINTOSH, E.McK.

R.C.E.M.E. SECTION

"A" OFFICERS

1. STRENGTH INCREASE: AMENDMENTS:

Part II Order #312 (para 1, page 1) d/26 Dec 44 insofar as it refers to u/n is hereby cancelled.
LIEUT. Malcolm Horace NICKERSON

2. COURSES:

Proceeded on Advanced War Equip Crse and att rep to Mil Coll of Sciv nce, Stoke-on-Trent wef 2 Jan 45.
MAJOR Edgar Wilkinsbn COLEMAN

AMENDMENTS:

Part II Order #315 (para 1, page 5) d/29 Dec 44 insofar as it refers to u/n is hereby cancelled.
LIEUT. Malcolm Horace NICKERSON

3. LEAVE OF ABSENCE:

Granted 14 days P.L. with money allce in lieu of rations from 1 Jan 45 to 14 Jan 45 (incl).
CAPT. John Edwin DEAN

4. NEXT OF KIN:

Change of address N-of-Kin to Mrs. Agnes Elizabeth Ross (Wife) 1896 West 5th Ave., Vancouver, B.C., Canada.
LIEUT. Robert Aitken ROSS

"B" OTHER RANKS

1. STRENGTH INCREASE:

TOS from Y3 List on disc from #1 Neuro Hosp wef 16 Dec 44.
F-87662 CPN. CHARLSSOL, E.A. (Fitter AFV "B")

TOS from Y3 List on disc from Roman Way Conv Hosp wef 19 Dec 44.
B-6446 PTE. ESCH, G.J.

TOS from Y3 List on disc from #4 Conv Depot wef 22 Dec 44.
C-94177 SGT. ROBERTS, T.A.

AMENDMENTS:

Part II Order #313 (para 2, page 7) d/27 Dec 44 insofar as it refers to u/n name is hereby amended to read "FORMBY, J.H.".
C-94275 SGT. FORMBY, G.H.

Part II Order #313 (para 2, page 9) d/27 Dec 44 insofar as it refers to u/n regt'l number is hereby amended to read "H-99275".
H-99275 CPN. MERRIMAN, F.A.

Part II Order #309 (para 1, page 4) d/ insofar as it refers to u/n rank is hereby amended to
M-11060 CPN. PIPER,

NO. 1 CANADIAN ORDNANCE AND MECHANICAL ENGINEER REINFORCEMENT UNIT
UNOFFICIAL THIS ORDER #1 2 Jan 45

R.C.E.M.E. SECTION

"A" OFFICERS

1. STRENGTH INCREASE: AMENDMENTS:

Part II Order #312 (para 1, page 1) d/26 Dec 44 insofar as it refers to u/n is hereby cancelled.
LIEUT. Malcolm Horace NICKERSON

2. COURSES:

Proceeded on Advanced War Equip Crse and att fap to Mil Coll of Science, Stoke-on-Trent wef 2 Jan 45.
MAJOR Edgar Wilkinson COLEMAN

AMENDMENTS:

Part II Order #315 (para 1, page 5) d/29 Dec 44 insofar as it refers to u/n is hereby cancelled.
LIEUT. Malcolm Horace NICKERSON

3. LEAVE OF ABSENCE:

Granted 14 days P.L. with money allce in lieu of rations from 1 Jan 45 to 14 Jan 45 (incl).
CAPT. John Edwin DEAN

4. NEXT OF KIN:

Change of address N-of-Kin to Mrs. Agnes Elizabeth Ross (Wife) 1896 West 5th Ave., Vancouver, B.C., Canada.
LIEUT. Robert Aitken ROSS

"B" OTHER RANKS

1. STRENGTH INCREASE:

TOS from Y3 List on disc from #1 Neuro Hosp wef 16 Dec 44.
F-87662 CFN. CHARLSSOL, E.A. (Fitter AFV "B")

TOS from Y3 List on disc from Roman Way Conv Hosp wef 19 Dec 44.
B-8446 PTE. ESCH, G.J.

TOS from Y3 List on disc from #4 Conv Depot wef 22 Dec 44.
C-94177 SGT. ROBERTS, T.A.

AMENDMENTS:

Part II Order #313 (para 2, page 7) d/27 Dec 44 insofar as it refers to u/n name is hereby amended to read "FORMBY, J.H.".
C-94275 SGT. FORMBY, G.H.

Part II Order #313 (para 2, page 9) d/27 Dec 44 insofar as it refers to u/n regt'l number is hereby amended to read "H-99273".
H-99275 CFN. MERRIMAN, F.A.

Part II Order #309 (para 1, page 4) d/21 Dec 44 insofar as it refers to u/n rank is hereby amended to read "CPL.".
M-[illegible] CFN. PIPER, L.W.

"B" OTHER RANKS ENGINEER REINFORCEMENT UNIT
UNIT ORDER #1 2 Jan 45

STRENGTH INCREASE: ENLISTMENTS: (CONT'D)

Part II Order #313 (para 2, page 10) d/27 Dec 44 insofar as it refers to u/n name is hereby amended to read "ROBIDOUX, L. ".
D-166313 CFN. ROBIDEAUX, L.

Part II Order #313 (para 2, page 11) d/27 Dec 44 insofar as it refers to u/n regt'l number is hereby amended to read "B-84636".
B-84636 CFN. WARDELL, D.H.

2. ATTACHED: (IN)

C/att to 1 Base W/S on adm to #22 Gen Hosp wef 26 Dec 44. (Extract DO #175 d/28 Dec 44).
B-63666 CFN. COSTEN, [illegible].J.

ATTACHED: (OUT)

Att fap to HQ CRU wef 2 Jan 45. (Auth CRU 408/HQ CRU/1 (PTA) 452/ Noel, J.C./1 d/27 Dec 44).
D-132466 PTE. NOEL, J.C.

3. COURSES:

Proceeded on P.D Crse and att fap to Surrey County Rescue School, Hillfield, Leatherhead, Surrey wef 31 Dec 44.
D-114748 A/CPL. LUSSIER, L.E.J.

Proceeded on Regt'l Sanitary Duties Crse and att fap to Army School of Hygiene, Keogh Brks., Mytchett, Nr. Aldershot wef 2 Jan 45.
F-36071 CFN. MacKENZIE, G.L.

Proceeded on Plt Weapons Crse and att fap to Small Arms School, Hythe Wing, Salisbury, Wilts wef 2 Jan 45.
F-96502 A/CPL. MacKINNON, C.A.

4. COMMAND:

Proceeded On Command to Derby wef 1100 hrs 14 Dec 44. Returned from On Command wef 2030 hrs 16 Dec 44. (Extract 1 COOD DO #181 d/27 Dec 44).
C-70427 L/CPL. CHEESMAN, V.W.

5. HOSPITAL:

Adm to #1 CMC wef 31 Dec 44.
B-19043 CFN. TISDALE, A.W.

6. LEAVE OF ABSENCE:

Granted 7 days P.L. and 48 hrs leave with money allce in lieu of rations from 2 Jan 45 to 11 Jan 45. (Total entitlement-9 days).
B-134643 PTE. CLARK, E.L.K. B-134766 CFN. DAVIDSON, R.F.
L-9922 CFN. SCARFF, W.G. M-40959 " POILE, H.

7. ABSENT WITHOUT LEAVE:

AWL from time and dates shown. Still absent at 2359 hrs 31 Dec 44.
B-55040 CFN. BARBER, P.B. 1500 hrs 4 Dec 44
B-53268 PTE. DAVIES, R.A. 1400 hrs 16 Dec 44
B-55673 CFN. HALLAWELL, D.R. 1200 hrs 26 Dec 44

"B" OTHER RANKS

STRENGTH INCREASE: AMENDMENTS: (CONT'D)

Part II Order #313 (para 2, page 10) d/27 Dec 44 insofar as it refers to u/n name is hereby amended to read "ROBIDOUX, L.".
D-166313 CFN. ROBIDOUX, L.

Part II Order #313 (para 2, page 11) d/27 Dec 44 insofar as it refers to u/n regt'l number is hereby amended to read "B-84636".
B-84636 CFN. WARDELL, D.H.

2. ATTACHED: (IN)

C/att to 1 Base W/S on adm to #[illegible] Gen Hosp wef 26 Dec 44. (Extract DO #175 d/28 Dec 44).
B-83668 CFN. COSTEN, [illegible].J.

ATTACHED: (OUT)

Att fap to HQ CEU wef 2 Jan 45. (Auth CMU 408/HQ CEU/1 (PT.) 462/ Noel, J.C./1 d/27 Dec 44).
D-132466 PTE. NOEL, J.C.

3. COURSES:

Proceeded on R.D Crse and att fap to Surrey County Rescue School, Hillfield, Leatherhead, Surrey wef 31 Dec 44.
D-114748 A/CPL. LUSSIER, L.E.J.

Proceeded on Regt'l Sanitary Duties Crse and att fap to Army School of Hygiene, Keogh Brks., Mytchett, Nr. Aldershot wef 2 Jan 45.
F-36071 CFN. MacKENZIE, G.L.

Proceeded on Plt Weapons Crse and att fap to Small Arms School, Hythe Wing, Salisbury, Wilts wef 2 Jan 45.
F-96502 A/CPL. MacKINNON, C.A.

4. COMMAND:

Proceeded On Command to Derby wef 1100 hrs 14 Dec 44. Returned from On Command wef 2030 hrs 16 Dec 44. (Extract 1 COOD DO #181 d/27 Dec 44).
C-70427 L/CPL. CHESSMAN, V.W.

5. HOSPITAL:

Adm to #1 CMC wef 31 Dec 44.
E-19042 CFN. TISDALE, A.W.

6. LEAVE OF ABSENCE:

Granted 7 days P.L. and 48 hrs leave with money allce in lieu of rations from 2 Jan 45 to 11 Jan 45. (Total entitlement-9 days).
B-134643 PTE. CLARK, E.L.R. B-134766 CFN. DAVIDSON, R.F.
L-9922 CFN. SCARFF, W.G.A. M-40989 " DOILE, H.

7. ABSENT WITHOUT LEAVE:

AWL from time and dates shown. Still absent at 2359 hrs 31 Dec 44.
B-55040 CFN. BARBER, P.S. 1500 hrs 4 Dec 44
B-53268 CFN. DAVIES, R.A. 1400 hrs 16 Dec 44
B-55673 CFN. HALLOWELL, D.M. 1300 hrs 26 Dec 44

"B" OTHER RANKS

ABSENT WITHOUT LEAVE: (CONT'D)

L-41898	CFN. LINENKO, F.C.	2359 hrs 26 Dec 44
F-39773	PTE. WHYNOT, B.W.	2230 hrs 21 Dec 44
B-7147	CFN. YOUNG, W.B.	2230 hrs 5 Dec 44.

Returned from AWL wef 1700 hrs 1 Jan 45.
F-39773 PTE. WHYNOT, B.W.

8. TRADESMEN'S RATES OF PAY:

Ceases T.P. as Armourer "B" on being TOS wef 21 Dec 44.
C-94177 SGT. ROBERTS, T...

9. AWARDS:

Awarded the Clasp to the CVSM wef 13 Dec 44. (Auth RO #4167).
F-89009 CPL. MURPHY, H.A.

Awarded the CVSM and Clasp wef 25 Nov 44. (Auth RO #4167).
K-1238 CFN. SCOTT, H.S.

10. STRENGTH DECREASE:

SOS to Y3 List on adm to #1 Neuro Hosp wef 30 Dec 44.
C-94178 CPL. ROGERS, J.G. (Shoemaker "B") (Quota)
D-81809 PTE. DOWNEY, J...

SOS to Y3 List on adm to #22 Gen Hosp wef 26 Dec 44.
B-63068 CFN. COSTEN, A.J. (Armourer "B") (Quota)

SOS to Y3 List on adm to #22 Gen Hosp wef 28 Dec 44.
D-117386 CFN. CRETEAU, J. (Welder "B") (AG 5465)

SOS to Y3 List on adm to #22 Gen Hosp wef 29 Dec 44.
F-21292 SGT. KEDDY, R.A. (...r. (Fitter)"...") (AG 5465)

SOS to Y3 List on adm to #22 Gen Hosp wef 26 Dec 44.
L-9211 S/SGT. ROYS, W.R. (Blacksmith "B") (AG 5465)

AMSM/EBCH

for (HERBERT H. BAILEY) CSL/, O.B.E., V.D. LIEUT.
C.O. NO. 1 C.O.M.E.R.U.
CDN. ...NY O/S.

No.1 C.O.M.E.R.U.

O.C A.D.M.W... COY DATE 22 Jan 45.....

SIR:

Number B:77563. Rank. Pte.....Name R.YERSE...H.E.....

The above mentioned has been admitted to the UNIT GUARD ROOM REPORTED ~~UNDER ESCORT~~

AT 0.1.1.0. HRS DATE 22 Jan. 45.. CHARGED WITH A.W.L.....

FOR YOUR INFORMATION AND ACTION, PLEASE, ..Cpl. Cooper.....

N.C.O. IC GUARD ROOM

Exhibit "A" - Certified true copy
22 Jan 45
W.P. Mosher (W.P. Mosher) Major

NO. 1 COMEMU

DOCUMENTARY EVIDENCE

GUARD ROOM:
NCO in Charge No. L-12618. Rank Cpl.
Name Cooper. B.J.

OC A.D.M.W Coy

Sir,

No B.77563. Rank Pte.
Name R.Y.E.R.S.E.: H.E.
Reported to me at 0.1.10 hrs 22 Jan 45 date

Remarks: Sober and Properly Dressed

Signed Cpl Cooper.
NCO in Charge, R.M.P.

Witness

Sir,

I have read over and corroborate the above statement.

Signed A.t. Standen L/Cpl. L-12981.

CAPT.
No. 1 COMEMU
ADJUTANT

M.F.R. 355

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Unit
R-97563	PTE.	Harold Eugene, RYERSE	1.C.D.A.F.R.U.

1. The following is a fair and true summary of the entries in the Regimental Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For AA 15 (1)	4 times	AA 15 (1) 6 times
For AA 15 (2)	1 times	AA 15 (2) 3 times
For AA 35	0 times	AA 35 1 times
For AA 40	2 times	AA 40 2 times
For AA 9	2	AA 9 2
For AA 11	1 times	AA 11 1 times

Number of instances of gallantry or distinguished conduct NIL

There are no entries in the conduct sheets of the accused.

Note.--If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

Previous convictions of the accused by court-martial or by civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 56 are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time

The accused at the present time is under stoppage of pay at the rate of ... per diem from the ... day of ...

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and ... days in military custody, making a total of ... days in custody, of which Nil days were spent in hospital.

5. The Date of Birth of the accused according to his attestation paper is 8 April 1924

6. The date of his enlistment specified in his record of service is 4 Nov 1942 attestation paper

7. The service which the accused is allowed to reckon towards discharge is ...

8. The accused is entitled to reckon 4 Nov 1942 service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no military decoration, or military award (or is in possession of or entitled to) State any military decoration or reward ...

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of ...

11. (In the case of an officer.) The accused holds in the C n dian Army the rank of .....N/A.....dated.....N/A.....and in his regiment (or unit) the rank of.....N/A.....dated.....N/A.....

12. The accused has served as a non-commissioned officer continously, without reduction to the present date:--

.....N/A.....Date of promotion.

In the rank of.....N/A.....years.

In the rank of.....N/A.....years.

In the rank of.....N/A.....years.

Note.-- If any matter in any of the above paragraphs cannot be stated from the regimental books, the paragraph must be struck through.

SCHEDULE

of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act , and of cases in which trial has been dispensed with of accused, Number.....N/A.....Rank.....N/A.....Name.....N/A.....
.....of.....N/A.....Unit.

Note.-- A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of court by wich tried	Date and place of trial	Charge upon which convicted	Sentence of the court	Punishment Remitted
N/A	N/A	N/A	N/A	N/A

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this.....26th.....day of.....January.....1945.....Capt. & Adj.
No. A [illegible] Ord. Mech. Eng. Reinf. Unit.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked.....signed by the president , and annexed to the proceedings.

I hereby request that the Convening Officer appoint an Officer to represent me at my forthcoming Court Martial.

Bordon, Hants.
22 Jan 45.

H E Ryerse
.....
(accused)
(B-77563 Private Ryerse, H.E.)

I hereby acknowledge that I have received a true copy of the Summary of Evidence taken at Bordon, Hants., preliminary to my Court Martial and I further acknowledge receipt of a copy of the Charge Sheet under which I am being brought to Court Martial.

Bordon, Hants.
22 Jan 45

H E Ryerse
.....
(accused)
(B-77563 Private Ryerse, H.E.)

MFM 6
(AFB 122)
40/FAS/156 (3438)

NoB-77563 Name RYERSE, H.E. | Sqn, Battery, or Company | Corps R.C.O.C. | Date of enlistment 4-11-42 | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet 13.3.43 | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
		New		Sheet on completion of six months service, 4.5.43.		Old sheet destroyed		13.6.44	
Field	18-6-1943	Pte		(1) Absent from place of parade (2) AWL from 1730 hrs 18-6-43 to 0600 hrs 21-6-43 (2 days, 12 hrs, 30mins)	CSM Watkins	14 days C.B.	21-6-43	Maj J.S. Gzowski	3 days pay FRI 149 (1)(a)
Field	2-7-1943	Pte		Absent from a place of parade, (Defaulters at 2130, 0615, 0830hrs)	Documentary	14 days C.B.		Maj J.S. Gzowski	
Field	6-10-1943	Pte		AA 15(1)AWL from 0600hrs 6.10.43 to 2000 hrs 10-11-43 (35days, 14hrs)	CSM Oliver	28 days det 28 days pay FRI 149 (1) (b)	11-11-43	LtColR.C. Teat	36 dys pay FRI 149 (1)(a)
Field	18-11-1943	Pte		Whilst undergoing detention talking on parade after being duly warned. AA 35	Cpl Perry	48 hrs No.1 punishment Diet	18-11-43	Capt W.M. MacAndrew	
Field	28-1-1944	Pte		Failing to appear at a place of parade appointed by his CO (0800 hrs parade 29-1-44)	Sgt Fodey	5 days C.B.	28-1-44	Maj J.C. Irvine	

(PTO)

NoB-77563 Name RYERSE, H.E. | Sqn, Battery, or Company | Corps R.C.O.C. | Date of enlistment 4-11-42 | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	24 Oct 1944	Pte		Sec.40 A.A. WOAS - Conduct to the prejudice of good order and military discipline in that he did fail to make up his bed at reveille 24 October, 1944.	Sgt Lockhart, W.L.	7 days C.B.	25 Oct 44	Capt H.W. Richardson	
Field	5 Nov 1944	Pte		AA Sec 15 (1) WOAS AWL from 2359 hrs 5 Nov 44 to 0910 hrs 6 Nov 44. (Total Absent: 9 hrs 11 mins)	Documentary	7 days C.B. 4 days Forf Pay	6 Nov 44	H.B.McIntyre (lt-Col)	1 ds Auto Forf Pay
Field	17 Nov 1944	Pte		(Chge 1) AA Sec 9 WOAS - Failed to report to FAP when ordered to do so (Chge 2) AA Sec 11 - WOAS Neglect in that he failed to make up his bed	Sgt Lockhart	7 days Fd Pun 7 days Fft Pay	18-11-44	F.T.Shoebridge Major	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	9-2-1944	Pte		(1) AA 15 (1) AWL from 0745 hrs 9-2-44 to 1600 hrs 9-2-44 (8 hrs 10 mins) (2) An act to the prejudice chewing gum on parade.	Sgt Griffith Cpl Swallow Sgt Fraser	7 days C.B.	10-2-44	Maj J.C. Irvine	
Field	17-5-1944	Pte		AA 15 (1)AWL from 2300 hrs 17-5-44 to 2330 hrs 17-5-44 (30 minutes)	Cpl W.J. Hutchinson	2 days F.F. 2 days pay FRI 149 (1) (b)	18-5-44	Lt Col W.J. Pingham	
Field	6 Sep 1944	Pte		A.A. Sec 9(2) WOAS Failed to appear on parade when ordered to do so by his superior offr. Cpl R.A. Cooke	Cpl Cooke Cpl Turner	7 days Fd Pun 7 days Forf Pay	7-9-44	F.M.Hearn Lt-Col.	
Field	16 Sep 1944	Pte		A.A. Sec 15 (1) WOAS AWL from 2300 hrs 16 Sep 44 until 1720 hrs 18 Sep 44. Time absent 1 day 18 hrs 20 mins.	Documentary Cpl Pearce	14 days C.B.	19-9-44	F.M. Hearn	2 days Auto Forf Pay FRI

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED TRUE COPY ..... OFFICER I/C RECORDS					

Kinney Capt adjt

E & A

000-82

SPR RYERSE RE

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig O. Prenderg... Comd 2 CBBG dated ...

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent & confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M-45155	Sgt	Robert Edward	RYERSE	9 CBR Bn

PROCEEDINGS REVIEWED
A Duncan Capt
13/6/44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held at the Fd in (country) ENGLAND on (date(s)) 2 JUN 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~Judge-Advocate and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which hours are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 4. 2. AA 49, 50, RP 103-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1206 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused is (are) to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~The Prosecutor informs the Court that accused is (are) to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

~~The Prosecutor has no objection to the Court as constituted.~~

~~The Prosecutor informs the Court that he has no objection to the Court as constituted. Any objection by accused is overruled.(3)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court I

Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~Judge-Advocate and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	~~Major~~	~~H G VERNON~~ CLENNETT	~~Regt R.C.A.~~	12 CBR Bn
Member	Capt	J.A. Macdonald.	North NS Highrs	9 CBR Bn
Member	Capt	R.N. Houston.	27 Can Armd Regt	9 CBR Bn
Judge-Advocate				
Prosecutor	Lieut	D.W. Beaty	N.S.R.	9 CBR. Bn.
Defending Offr	Lieut	G.E. Henderson.	North NS Highrs	9 CBR Bn

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an accountant when RP 89 (B) and fn 2 were not followed. See DI p 33.)

A8. The accused ~~M 45 155 Sgt~~ Ryerse R E before arraignment makes(s) (~~has made~~) no plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) ~~There is not a amendment to be made to the Charge Sheet.~~(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 6

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M-45155 Sgt Robert Edward RYERSE, 9 CBR Bn

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~Imprisonment with/without hard labour for ... (beginning on date)~~ (1) 6

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 5 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

to undergo 28 days detention

(Sgd) ... Judge-Advocate, if any. 2 June 44 Date awarded. (Sgd) ... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ... (Sgd) ... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) 6

(1. AA 57A. Delete if not used.)

Date 3 Jun 44 (Sgd) ... Commanding (or Prescribed Offr) Comd 2 Cdn Base Sub Gp Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
M-45155 Sgt. Robert Edward Ryerse	JUN 5 - 1944	Maj Capt Adjt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) changes his (their) plea(s) of Not Guilty to charge(s). Part I of the Schedule is amended accordingly.~~
(1. Court may be required to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge(s) on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Put here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. ..... Do you intend to call witnesses on your behalf ? Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fn 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 185. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes. (By Defending Offr)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and also by the accused~~.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

9

The accused, M-45155, Spr. Robert Edward RYERSE, R.C.E., on strength 9 Bn, 2 Canadian Base Reinforcement Group, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Sec 15(1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, absented himself from 9 Bn, 2 C.B.R. Group, from 0700 hours, 28 May 44, until reporting in at 1055 hours, 28 May 44. Total time absent 3 hours, 55 minutes.

(H.W. Rick), Lt.-Col.
Commanding,
9 Bn, 2 C.B.R.Gp.

In the Field

29 May 44

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

(G Francoeur) Brig
Comd
2 Cdn Base Rft Gp

In the Field
31 MAY 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
M-47166	Gnr		Robert Edward W.	RYERSE	R/D, 9 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above [illegible] being subject to military law, has ~~have~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 31 MAY 44 endorsed by me, (~~or by an offr of my rank or me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	M G CLENNETT	Asst M S B, 11 CBR Bn

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by OC 9 CBR Bn	9 CBR Bn
Lieut	to be detailed by OC 9 CBR Bn	9 CBR Bn

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	to be detailed by OC 9 CBR Bn	9 CBR Bn

~~JUDGE-ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ENGLAND (Country.)

(signed personally. RP 105 fn 2.) (Rank.)

(G Francoeur)

Date 31 MAY 44 Commanding 2 Cdn Base Bft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAR5 (To take place of AFA3) 40-P & S-1807 74691)

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Form 557)
(CMHQ CL 173)

I certify that I have this day examined M/43765
(No.)

SPR. RYERSE R.E.
(Rank) (Name) and in my opinion he is

~~unfit~~ fit to undergo trial by Court-Martial.

Station FIELD

Date. 2 June 44

N B Farrell Capt (Sgd)
Medical Officer

(unit) R Can A.S.C. 1 C.B.R.D.

The accused points out an error in the spelling of his second name,

The Court being satisfied that the name of the accused is Robert Edward Ryans and not as stated in the charge sheet amend the charge sheet accordingly.

By the Defending Officer in mitigation of punishment

He accused has for over three years been given technical training in specialists work in the R.C.E. It is his desire that having such training as so urgently needed he will be given the first opportunity to make use of his training with the unit in the field. I would also ask the court to take into consideration 5 days already spent under close arrest

SUMMARY OF EVIDENCE

in the case of

M-45155, Spr. RYERSE, R.E., R.C.E., on strength 9 Bn, 2 Canadian Base Reinforcement Group, a soldier of the Canadian Army Overseas, is charged with:-

(1) When on active service, absenting himself without leave. A.A. Sec 15(1).

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS for Prosecution

B-107548, Cpl. Hedden, R.A., 9 Bn, 2 C.B.R.Gp, having been duly sworn, states:-

"I am B-107548, Cpl. Hedden, R.A., and called reveille call at 0700 hrs, 28 May 44, and Spr. Ryerse R.E., M-45155, failed to answer his name. As duty N.C.O. of R.C.E., attached to 43 Coy, 9 Bn, I looked in the lines and quarters and could not find Spr. Ryerse. I then handed in a report to the orderly room that Spr. Ryerse R.E. was absent."

The accused declines to cross-examine the witness.

B107548 Cpl Hedden R A

B-107548, Cpl. Hedden, R.A.

SECOND WITNESS for Prosecution

M-65723, L/Cpl. Radcliffe, H.E., 9 Bn, 2 C.B.R.Gp, having been duly sworn, states:-

"I am M-65723, L/Cpl. Radcliffe, H.E., and was on duty at 1055 hrs on 28 May 44, when Spr. Ryerse, M-45155, reported to Guard Tent. I then placed Spr. Ryerse under close arrest. The accused was sober and properly dressed."

The accused declines to cross-examine the witness.

M 65723 L/Cpl. Radcliffe H.E.

M-65723, L/Cpl. Radcliffe, H.E.

The accused was cautioned as follows:-

Do you wish to make any statement or give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make any statement or to give evidence on oath.

The accused declines to call any witnesses for the defence.

I certify that the foregoing Summary of Evidence, consisting of two pages, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(C), (D), (E) and (F) have been complied with.

D. W. Beaty Lt.

(D. W. Beaty), Lieut.,
Officer detailed to take
the Summary of Evidence.

In the Field.

29 May 44

Exhibit B myc

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
M-45155	Spr	Robert Edward RYANS	R.C.E. (2 Bn., 8 C.T.C.Gp)

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For A.W.L., AA 15(1) 1 times.

For Drunkenness -- AA 19 1 times.

For C.C.C.C. & F.D., AA 40 4 times.

For ..... times.

Date of first entry in Field Conduct Sheet 2 Jan 42

Date of last entry in Field Conduct Sheet 26 Mar 44

~~2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.~~

*~~3. The accused at the present time is under sentence for ..... beginning on the ..... day of .....~~

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 25 days in military custody, *i.e.*, nil days in open arrest, 25 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 23 yrs (Born 21 Sep 20)

6. The date of his attestation is 2 Jun 40

~~calling up for military service~~

7. The service which the accused is allowed to reckon is 2 yrs, 11 months.

8. The accused is in possession of‡ C.V.S.M., 8 Clasp

‡State the military decoration (if any) held by accused.

9. (~~*If the accused is a warrant officer or N.C.O.*~~) ~~The accused has served continuously~~ without reduction, to the present date—

Date of Promotion.

~~In the substantive rank of .....~~

~~*If* the war substantive rank of .....~~

~~In the acting rank of .....~~

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

[21134] W.3.5670.688 100,000 4/42 A.& E.W.Ltd. Gp.688
[34589] W.3.25/256.1573 80,000 7/42 Forms B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 7 day of Jan 1944

(O.C. HQ Coy, C.A.E., & Adjt.,
9 Bn, 2 C.A.B., BRIXHAM.)

Exhibit C

Revised in accordance with C.A.R.O. 11 Dec 42 — J.L. Martin, Lieut.

No M45155 Name Ryerse, R.E. — Sqn, Battery, or Company — Corps R.C.E. — Date of enlistment 12-6-40 — GC Badges — Service or Proficiency Pay N/A — MFM 6 (APB 122) (6)PAM/126 (3488)

Date of last entry in Company Conduct Sheet N/A — No and date of last drunk N/A — Period not reckoning towards freedom from extra fine N/A — Sheet No 1 — Signature OC Company, etc J.L. Martin, Lt. — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Previous sheet destroyed 12-6-42. Last entry dated 31-7-41					
Debert	2-1-42	Pte		AWL 6 days 14½ hrs from 2200 hr 2-1-42 to 1230 hrs 9-1-42.	Cpl Lavoie	Forf 21 days pay. A.A.Sec 46(2)d.	9-1-42	LtCol W.P. Bristowe	Forf 7 days pay
Debert	15-3-42	Tpr		Found in a mil vehwhich was being driven without authority.	Sgt Hollo-way	168 hrs Detn	19-3-42	Maj Wright	
Field	24-7-43	Spr		WOAS Conduct, etc, in that he drove WD veh at excessive rate of speed. Sec 40 A.A.	Documentary	7 days C.B.	3 Aug 43	Lt.-Col. Kerry, AJ	
Field	22-11-43	"		WOAS at 1000 hrs 22 Nov 43 was involved in an accident. AA 40.	Documentary	7 days C.B.	29-11-43	Lt.Col Kerry, A.J.	
Field	10-1-44			WOAS Conduct, etc, in that he did not take proper care of his Paybook, allowing pages of it to be torn.	Documentary	7 days C.B.	10-1-44	Capt. Norten	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	25 Mar 44	Spr	1	WOAS was drunk & incapable A.A.19.		Admonished	27 Mar44	Maj E.H. Wright.	

Certified true copy taken from Regimental Books in my custody.

(C.L. Nelson), Captain & Adjutant,
9 Bn, 2 C.B.R.Group.

2 of 2

LIST OF WITNESSES

in the case of

M-45155, Spr. Robert Edward RYERSE.

FOR PROSECUTION

(1) B-107548, Cpl. Hedden, R.A. 9 Bn, 2 C.B.R.Gp.

(2) M-65723, L/Cpl. Radcliffe, H.E. 9 Bn, 2 C.B.R.Gp.

FOR DEFENCE

N i l

EEE-9

TRR RYCKMAN. M-A

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A-87171 Tpr. M. A. Ryckman 30 Recce Regt.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 40	Not guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 0 days, of which 0 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To forfeit all ordinary pay for a period of ten (10) days.

(Sgd) ..... 1 Mar 44 (Sgd) F D Tweedie Lt Col
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding[X] and sentence set forth in Part I is:

Finding & Sentence Confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1. AA 57A. Delete if not used.)

(Sgd) ..... (LOUIS KEENE) Colonel
Date 3 Mar 44 Commanding "F" Gp, CRU
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
A87171 Tpr. Ryckman M.A.	4 Mar 44	J Warnock Lt.-Col. O. C., 30th Recce. Reg't Group, R.C.A.C.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

ENTERED IN RECORDS OF CM. E E E 9

FIELD GENERAL COURT-MARTIAL

(CF A96 (In lieu of AFB3) 10-P.A.U. 10/08 (38054))

Convened by Order of Colonel Louis Keene Comd F Gp, CRU dated 28 Feb 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A 87171	Tpr	Manlon Archibald	RYCKMAN	30 Recce Regt (Essex Regt)

PROCEEDINGS REVIEWED
J Warnock Capt
17 Mar 44

PROCEEDINGS OF TRIAL.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

Held in the Fd in (country) England on (date(s)) 1 Mar 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any~~, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 62-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn b. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ..... as interpreter?~~ Ans ~~.....~~
~~The interpreter is sworn.~~(1) Do you object to Pte G. S. Peddaway as shorthand writer? Ans No.
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any~~, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt. Col.	F. D. Tweedie	10 D.G. R.C.A.
Member	Major	J. T. Shelbourne	1 Sta Base Log RCOC
Member	Lieut	G. H. Roberts	1 CBW. RCOC
Judge-Advocate			
Prosecutor	Capt.	A. H. C. Anderson	30 Recce Regt.
Defending Offr	Lieut	J. A. Crawford	30 Recce Regt.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No(2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~a~~ plea. (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] *3.*

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to r[illegible]sult of its decision. See M M L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A)[illegible]; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court etc see RP 75-78, 88, 119[illegible]; use of Summary of Evidence at Trial see RP 17(B) fn 6; and responsibility of JA or Pros to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. ~~The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning~~ of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part 1 of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 5 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. No.....(1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes [redacted] (no) opening address.(1)

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does~~ not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on ~~the latter charge(s).~~(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. D. neither. Do you intend to call witnesses on your behalf ? Ans. Yes. Are they witnesses as to character only ? Ans. No.

(*1. RP113[illegible] 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.~~(2)

(*1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. No.

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. A and Ex. B respectively.(3)

(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes.(2)

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~(2)

(*1. When several accused tried separately see RP [illegible](D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and (as appropriate), is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 44(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. [illegible]. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs in [illegible] of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused A-87171 Tpr Mahlon Archibald Ryckman, 30th Reconnaissance Regiment (The Essex Regiment) CAC, C.A., a soldier of the Canadian Army, placed on Active Service, is charged with:-

FIRST CHARGE
ARMY ACT SEC 40 WHEN ON ACTIVE SERVICE NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he
In the Field, on Tuesday 1 Feb 44 at 0405 hrs, so negligently handled a rifle as to cause it to be discharged and thereby injured M-51104 Tpr St.Denys, G.M. in the right leg and rendered him temporarily unfit for service.

(D.W. Warnica) Lt.-Col.
Commanding Officer
30th Reconnaissance Regiment
(The Essex Regiment) CAC C.A.

In the Field
17 Feb 44

To be tried by Field General Court Martial.

(LOUIS KEENE) Colonel
Comd "F" Gp, CRU

25 Feb 44

FIELD GENERAL COURT-MARTIAL

CFAAO [In lieu of AFA33] 40/FA33/1097 (2nd)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 103(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt	Full Christian Names.	Surname.	Unit.
A-87171	Tpr	Mahlon Archibald	Ryckman	30 Recce Regt (Essex Regt)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person[X] named above as the accused, being subject to military law, has [XXXX]committed the offence[X] set forth in the Charge Sheet[X] attached and on (date) 28 Feb 44 endorsed by me, [XXXXXXXXXXXXXXXXXX] "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence[X] should be tried by an ordinary General Court-Martial; [XXXXXXXXXXXXXXXXX

Medical Officers' Certificate.
M.R. (Can) Form 567.

I certify that I have this morning examined
A-97171 Tpr Bykman, N.A., of the 30 Recce Regt
(Essex R.) and in my opinion he is fit for to
undergo trial by Court Martial.

Field.
Date.....

(D.A. Woodland) Capt RAMC
Medical Officer,
30 Recce Regt (Essex R.)

567.

F.G.C.M. in the case of A-87171 Tpr RYCKMAN, M.A., on the strength of 30 RECCE Regt (Essex Regt)

First Witness for the Prosecution

A-86951 Cpl BALKWILL, E.R., of the 30th Reconnaissance Regt, (Essex Regt) having been duly sworn, is examined by the Prosecutor:

Q1 Will you kindly tell the court the nature of your regimental duties at 0405 hrs 1 Feb 44.

A1 At 0405 hrs on 1 Feb 44 I was Corporal of the Regimental Guard. It is a permanent guard in as much as the man-power situation in this regiment makes it impossible to change men from one job to another. I had been on the job for some weeks as had the rest of the guard. At the time in question the guard had been on duty for a period of 20 hours and some of the men, those not on duty, going on or coming off, were asleep. Tpr St.Denys, a soldier under sentence was asleep in the guard room. The guard was composed of three men and a Corporal. This guard was relieved by another three men and a Corporal the following day.

Q2 Will you tell the court how long these men had been actually employed on duty and whether it was a guard which was on one day and off the next day?

A2 The guard had been on for a period of 20 hours at the time of the accident. They had mounted at 0800 hrs on 31 Jan 44 and had been on guard continuously. At 0800 hrs on Saturday 29 Jan 44 the guard was mounted and they worked through until 2400 hrs Sunday 30 Jan 44 in order to give the relieved guard a week-end.

Q3 In other words the guard mounted at 0800 hrs Monday 31 Jan 44 and were on till 0800 hrs 1 Feb 44 and it was during this time that the incident occured?

A3 Yes, Sir.

Q4 Do you recognize Tpr Ryckman as a member of that guard?

A4 Yes, Sir;

Q5 Will you tell the court what type of a personal weapon Tpr Ryckman was carrying?

A5 A rifle, Sir.

Q6 Was he issued with live ammunition?

A6 Yes, he was issued with live ammunition which was passed between the guards in the form of loaded magazines.

Q7 Had you instructed the guard prior to mounting as to their duties?

A7 No, Sir. They had been on guard at various times before and I considered that their duties were well known to them.

Q8 Were there ever any written instructions given to you concerning your guard?

A8 Written instructions were available in the guard room. They had been in force for some time.

Q9 What is this?

A9 That is a copy of the guard instructions.

Q10 Will you tell the court exactly what were the instructions concerning the handling and unloading of magazines?

A10 The unloading of magazines was to be carried out by exchanging them at the sentry posts. They merely took the magazines off their rifles and handed them to the guard replacing them.

Q11 Will you tell the court of the incident which occured in your guard house at about 0405 hrs on 1 Feb 44?

A11 At 0400 hrs on 1 Feb 44 Tpr Ryckman was relieved by Tpr Marshall at the sentry box. I was not present at the guard change since there was a prisoner in the guard house and rather than awaken the men who were asleep I remained in the guard house and watched the prisoner. When Marshall left the guard room I lay down on a bed. Ryckman entered the guard house, unloaded his rifle, drove home the bolt and pulled the trigger.

A11 I did not realize at first what he was doing until I heard the report of the rifle and the groan of Tpr St.Denys. I did not pay much attention actually to Ryckman when he came in because he had always been a very dependable guard.

Q12 Will you tell the court why Ryckman was carrying live rounds in his magazine?
A12 He was relieved by Tpr Marshall who carried a sten gun and who therefore didn't require the magazine.

Q13 You said you were not paying much attention to Ryckman when he entered the guard room?
A13 That is right, Sir.

Q14 Could you give the court some idea of the way in which Ryckman unloaded his rifle and what circumstances caused the rifle to be fired while held in a downward position?
A14 Ryckman was clearing his rifle and putting the rounds in a box which we have on the wall for that purpose, and he dropped one of the rounds on the floor.

Q15 Did you see the round on the floor?
A15 Yes, Sir.

Q16 What else did you see with respect to the ammunition?
A16 I saw the round on the floor and I saw four rounds in the box.

Q17 Did you check the ammunition after the shot had been fired?
A17 Yes, Sir. There were four rounds in the box, one on the floor and a spent casing in the breech of the rifle.

Q18 Can you tell the court why Ryckman's rifle was loaded with six rounds of ammunition?
A18 I do not know why there were six rounds in the rifle, Sir.

Q19 You mentioned St.Denys, the man who received the wound, why was he in the guard room?
A19 He was serving a sentence of 14 days detention.

Q20 Was he in the same room as the guard?
A20 He was in the same room because we have no facilities for keeping them separate.

CROSS-EXAMINED BY THE DEFENDING OFFICER:

Q21 You state this is a regimental guard?
A21 Yes, Sir.

Q22 Did the R.S.M. ever inspect your guard?
A22 No, Sir.

Q23 Who laid down your guard orders?
A23 They were drawn up by the R.S.M., Sir, and Cpl Campbell.

Q24 Were the guard orders signed by anyone?
A24 I do not remember, Sir.

Q25 Were the guard orders posted on the wall in the guard room?
A25 I never saw them on the wall, Sir.

Q26 There were no orders on the wall the day this incident took place?
A26 No, Sir.

Q27 You say the guard which was on duty on Saturday stayed on duty over the week-end so that the other members of the guard might have a week-end free. Were you one of the other members of the guard who had a week-end?
A27 No, Sir.

Q28 You were on duty?
A28 Yes, Sir.

Q29 At the time you also stated that there were prisoners in the guard room? A29 Yes, Sir.

Q30 You state that someone had to guard these people in detention?
A30 Yes, Sir.

Q31 Was it ever a practice on this regimental guard that the guard would be taken to their positions properly by the N.C.O. of that guard?
A31 It was done, Sir.

Q32 How long was it carried out?
A32 I did it myself from time to time, Sir.

Q33 Do you know whether one of the purposes of that guard was to prevent vehicles from being taken from the vehicle lines without proper authority?
A33 I do not know, Sir.

Q34 Did you have any special instructions about checking vehicles which came in and out of the area?
A34 Yes, Sir.

Q35 How many men were on the flying vehicle picquet?
A35 Three men, Sir.

Q36 Were these men available at all times?
A36 Yes, Sir.

Q37 Why did you not have one of these men watch your prisoner?
A37 I do not know, Sir.

Q38 You never had any complaints about your guard from the R.S.M. or up?
A38 I wouldn't say that, Sir, but any we had were of a minor nature.

Q39 You had no complaints about the way in which the guard was mounted?
A39 No, Sir.

Q40 Did you think it was all right to allow people to go out from the guard room and take post without being properly paraded. Did you understand that to be proper procedure?
A40 No, Sir.

Q41 Were you given proper instructions by the R.S.M?
A41 No, Sir, I was merely told to take over the guard.

Q42 You had no instructions?
A42 No, Sir.

Q43 Why couldn't you have kept a man from the flying piquet and let the flying piquet go out on their own?
A43 No reason, Sir.

Q44 How many rounds are normally kept in the box in the guard room?
A44 10 rounds of .303 ammn. and 36 rounds of 9 mm. ammn.

Q45 What was the usual practice when you gave ammunition to the men on your guard?
A45 I usually gave them five rounds, Sir.

Q46 Why did you make it a practice of giving five rounds?
A46 Because one magazine was carried by the flying piquet and the other by the guard at the main gate.

Q47 Then we might say that there should be five rounds in each of the two magazines?
A47 There was no rule laid down.

Q48 Did you ever instruct any of the men on your guard how many rounds they should carry?
A48 No, Sir.

Q49 Did you always issue five rounds?
A49 Yes, Sir.

Q50 When you took over the guard did you count the number of rounds in the box?
A50 No, Sir.

Q51 When Tpr Hallman was going on duty on the night in question did you issue him with ammunition or did he take his own?
A51 He took his own, Sir.

Q52 At the time of the accident how many rounds of ammunition did you see?
A52 Five rounds, Sir. Four in box on the wall, one on the floor and one spent casing in Ryckman's rifle.

Q53 That meant there were eleven rounds in possession of the guard?
A53 Yes.

Q54 Do you think that the additional round could have been put in there by someone?
A54 Yes, Sir.

Q55 You said you were lying on a bed when this accident took place. Were you asleep?
A55 No, Sir.

Q56 You are sure?
A56 Yes, Sir.

Q57 You clearly saw Ryckman unloading his rifle?
A57 I was not watching him, but I heard the action of his bolt and assumed that that was what he was doing.

Q58 Did you count the number of times he eased springs?
A58 No, Sir.

Q59 Did you check the personnel of your guard after the incident to see if you could find out anything about that extra round?
A59 I tried to find out about it and I believe that a court of inquiry was held the same day.

Q60 When you heard the action of Ryckman's bolt in the guard house, did you attempt to stop him?
A60 No, Sir.

Q61 Had other people unloaded their rifles in the guard house before?
A61 Not that I can recall, Sir, but I had seen the magazines taken off in the guard room before.

Q62 Was this an infraction of guard regulations?
A62 Yes, Sir.

Q63 Had you checked anyone for doing this before?
A63 Yes, Sir.

QUESTIONED BY THE COURT:

Q64 Was there a light in the guard room?
A64 Yes, Sir.

Q65 Were you facing Ryckman?
A65 No, Sir.

Q66 Was there anyone else in the guard room?
A66 There were the men sleeping.

Q67 This St.Denys, you heard him groan. What did you do in connection with this?
A67 We applied a tourniquet to his leg and sent for the Medical Officer.

Q68 Was the wound above or below the knee?
A68 Below the knee.

Q69 What type of a rifle was it?
A69 A Lee-Enfield .303.

Q70 Do you know what instructions Ryckman has had in the use of a rifle?
A70 He has passed his basic training, Sir, and has been in the army over 18 months to my knowledge.

Q71 Do you know of any range practice he has shot?
A71 I do not know, Sir.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

Second Witness for the Prosecution.
A-87015 Cpl CAMPBELL, H.K. of the 30th Recce Regt (Essex Regt) having been duly sworn, is examined by the Prosecutor:

Q72 What was the nature of your duty on the night of 31 Jan 44?
A72 I was sleeping in the regimental guard house prior to going on duty the following morning at 0800 hrs. I had the permission of the Sergeant Major to sleep in the guard house because my troop quarters were situated away from the Squadron and being on permanent guard permission was granted to me to sleep in the guard house. I was asleep at the time of the accident.

Q73 Did Cpl Balkwill relieve you at 0800 hrs 31 Jan 44.
A73 Yes, Sir.

Q74 Did you count the number of rounds of ammunition in the box at that time?
A74 Yes I checked the ammunition and found 10 rounds of .303 and 36 rounds of 9 mm. ammunition.

Q75 Would you look at Ryckman. Do you recognize him as a member of Balkwill's guard that night?
A75 Yes, Sir.

Q76 Can you tell us exactly what happened at 0405 hrs 1 Feb 44?
A76 I was awakened at 0405 hrs 1 Feb 44 by the sound of a shot and I jumped out of bed immediately and noticed that St.Denys had his leg over the edge of the bed. It was bleeding quite freely. Balkwill and I applied a tourniquet while Ryckman went to get the Medical Officer. The Medical Officer arrived a few minutes later. I accompanied St. Denys to the hospital and then returned to my regiment.

Q77 During the time you have been on guard have you had Ryckman as a member of your guard?
A77 Yes, Sir, for a period of time.

Q78 Have you ever instructed Ryckman in the proper guard procedure?
A78 I cannot recall giving him any instructions. He has been on guard from the beginning, since the first of November I believe and I more or less took it for granted that he was familiar with the orders about the guard.

Q79 Do you recall ever having given him any specific instructions?
A79 No, I cannot remember having given him any specific instructions.

Q80 Do you know whether Ryckman ever had any instruction in the handling of rifles?
A80 For myself I cannot say, Sir.

Q81 What was Ryckman's general attitude on guard. Did he follow regulations?
A81 I always found Ryckman to be a very reliable and dependable guard.

CROSS-EXAMINED BY THE DEFENDING OFFICER:

Q82 You say you checked the ammunition that was issued to the guard at 0800 hrs 31 Jan 44?
A82 Yes, Sir.

Q83 How many rounds did you find in the box?
A83 I found 10 rounds of .303 and 36 rounds of 9 mm. ammunition.

Q84 When a man did guard for you how many rounds did you issue?
A84 Five rounds in the case of a rifle and 10 rounds in the case of a Sten gun.

Q85 Did you ever allow the men to take their own ammunition?
A85 It had been done, Sir, yes.

Q86 Did you instruct the men that they were to have five rounds of .303 ammunition in their magazines?
A86 They had always been given five rounds, never more.

Q87 Have you ever had a man return to the guard room and unload his rifle in the room?
A87 No, Sir, because it was the practice to exchange magazines at the guard post.

Q88 Did you have any men on your guard carrying Sten guns?
A88 No, my guard all carried rifles, and therefore we exchanged magazines at the post instead of unloading each time.

Q89 Were there ever men posted at night on the main gate who carried weapons other than rifles?
A89 No, Sir.

Q90 At any time had you ever had a man on the main gate with any other weapon?
A90 No, Sir, they always had rifles.

Q91 Have you ever seen a man enter the guard room with a loaded weapon?
A91 Yes, Sir, it has happened. The vehicle picquet has done it.

Q92 Was there any rule laid down about a man unloading his rifle outside?
A92 No, Sir.

Q93 After the accident took place how many rounds of .303 were found to be in possession of the guard?
A93 I did not check the ammunition, Sir.

Q94 How long after the accident did you take over as commander of the guard?
A94 Four hours after the accident, Sir.

Q95 When you took over how many rounds were there?
A95 Ten rounds of .303 and 36 rounds of 9 mm. and a spent casing in the possession of Cpl Baikwill.

Q96 Do you know if any check was made about men in the guard having spare ammunition?
A96 Not to my knowledge.

Q97 When men go on guard duty have you any instructions to parade them out?
A97 There were no definite instructions laid down, Sir.

Q98 Who made up the instructions in the guard room?
A98 The R.S.M.,Sir.

QUESTIONED BY THE COURT:

Q99 Was St.Denys on a bed?
A99 Yes, Sir.

Q100 How high was the bed?
A100 He was on the lower part of a"double-decker".

Q101 How far was this bed from the box where the ammunition was kept?
A101 About 6 or 8 feet.

Q102 Did you say you checked the ammunition after the accident?
A102 I checked it in the morning at 0800 hrs before going on duty.

Q103 Prior to the dismissal of your guard is it inspected by anyone?
A103 The guard is inspected every morning, Sir.

Q104 Are the rifles inspected at that time?
A104 Yes, Sir.

Q105 What time do you mount guard?
A105 The new guard takes over at 0800 hrs, Sir.

Q106 Is the new guard inspected?
A106 Before going on, Sir.

Q107 Who inspects the old guard?
A107 The guard Corporal, Sir.

Q108 Has there been any recent musketry firing practice carried on in your unit?
A108 Not for the last three of four months because we have not been training according to the syllabus due to the fact that we have practically all been working on the assembly line, a priority job.

Q109 On the occasion of your last range practice, was a proper inspection made of all rifles?
A109 There was always a proper inspection carried out, Sir.

Q110 Were you on the range on the last occasion that firing practice was carried out?
A110 Yes, Sir.

Q111 Did you see a proper inspection of all arms being made?
A111 Yes, Sir.

Q112 Have you ever seen ammunition being loosely handled?
A112 Yes, when we were at No.1 CACRU.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

Third Witness for the Prosecution

M-106690 Tpr HALLMAN, W.S., 30th R.oce Regt (Essex Regt) having been duly sworn, is examined by the Prosecutor:

Q113 Were you on duty on Cpl Balkwill's guard on the night of 31 Jan 44 1 Feb 44?
A113 Yes, Sir.

Q114 At 0200 hrs on 1 Feb 44 did Ryckman relieve you at the sentry box?
A114 Yes, Sir.

Q115 Will you look at Ryckman. Do you recognize Ryckman as the man who relieved you?
A115 Yes, Sir.

Q116 Did you pass any live ammunition to him when he relieved you?
A116 Yes, Sir.

Q117 How many rounds?
A117 A magazine containing six rounds, Sir.

Q118 Did you tell him that there were six rounds in the magazine?
A118 No, Sir.

Q119 Where was St.Denys sleeping in the guard room?
A119 In the far bed on the right hand side of the guard room. The bed was approximately one foot off the floor.

Q120 Did you receive any instructions on that night from the guard commander?
A120 No, Sir.

CROSS-EXAMINED BY THE DEFENDING OFFICER:

Q121 You stated you were on guard on the morning of 1 Feb 44. What time did you go on?
A121 At 12 o'clock midnight on 31 Jan 44, Sir.

Q122 What time did you come off?
A122 At 0200 hrs 1 Feb 44, Sir.

Q123 You state that you were relieved by Ryckman?
A123 Yes, Sir.

Q124 You say now that you recognize him?
A124 Yes, Sir.

Q125 When you exchanged guards with Ryckman did you use a light?
A125 Yes, Sir.

Q126 Did you flash the light on him?
A126 I do not recall, Sir, but I recognized him by his voice.

Q127 Did you tell him how many rounds were in the magazine?
A127 No, Sir.

Q128 Were you ever told to place five rounds in your magazine?
A128 No, Sir.

Q129 You just picked up the ammunition and loaded your own magazines?
A129 Yes, Sir.

QUESTIONED BY THE COURT:

Q130 How did you know there were six rounds in the magazine?
A130 I had charged the magazine with six rounds the following morning.

Q131 Where did you get the rounds?
A131 I got them in the box on the guard room wall.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

Fourth Witness for the Prosecution

Major H.E. FOEX, RCAMC, attached to No.2 Cdn Gen Hospital, having been duly sworn, is examined by the Prosecutor:

Q132 Have you a patient at present in your hospital, M-51104 Tpr St.Denys?
A132 Yes, Sir.

Q133 Will you tell the court of his condition upon admittance?
A133 He had a gun-shot wound in the right lower leg about the junction of the middle and lower third. The wound of entry was on the postero-latero aspect of the leg and the wound of exit was on the anterior aspect of the leg. There is considerable loss of skin at the wound of exit and considerable soft tissue damage. A number of the muscles having to do with the pulling up of the foot having been severed. There was also loss of about one inch of the fibula due to the destruction of soft tissue. It was impossible to suture a number of the damaged muscles and their action will therefore be largely lost. It is impossible at this time to tell definitely how much permanent disability will result but there will probably be considerable permanent disability.

DEFENDING OFFICER DECLINES TO CROSS-EXAMINE THE WITNESS.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

First Witness for the Defence

A-62058 Armourer/Sgt BROWN, J., RCOC, attached to 30th Recce Regt (Essex Regt) having been duly sworn, is examined by the Defending Officer:

Q134 How long have you been an Armourer?
A134 Two years, Sir.

Q135 In the time you have been an Armourer have you carefully examined any .303 ammunition?
A135 Yes, Sir.

Q136 Have you ever found a difference in the length of .303 ammunition?
A136 Yes, Sir. There are some rounds longer than others.

107

Q137 What would be the result of long rounds in the magazine?
A137 The spring in the magazine would remain down.

Q138 Is it possible that on easing springs the round would remain stuck in the magazine and upon violent action of the bolt the round would finally come up?
A138 Yes, Sir.

Q139 If during a period of work particles of dust or dirt were lodged in a magazine what effect would this have?
A139 Dust would not interfere with the working of the magazine but grit would, Sir.

Q140 Could a rifle with ammunition in it after having been cleared by means of using the bolt have a round stuck in the magazine; then when springs were eased two or three times after the last apparent round came up could this last stuck round come up?
A140 Yes, Sir.

Q141 What action would happen on the finishing of the clearing of the rifle when this last round came up?
A141 The round would be inserted in the breech by the bolt and when the trigger was squeezed before applying the safety catch the rifle would fire.

Q142 If a rifle were held loosely and a round went off would the rifle jump?
A142 Yes, Sir.

Q143 How far would it jump?
A143 About a foot.

Q144 Could it jump more than a foot?
A144 It depends on how loosely the rifle was held but in any case it would not jump much more than a foot.

Q145 When you examined the rifle which in this case is said to have injured St.Denys what kind was it?
A145 A Mark IV, One Star.

Q146 Has there been any trouble with these rifles?
A146 Not with ours, Sir.

Q147 Has there been trouble with ammunition sticking in the magazines?
A147 Yes, on the range.

Q148 In this case, could it have been the fault of the ammunition?
A148 It could have been, Sir.

Q149 Could it have been the rifle?
A149 I checked the rifle and it was O.K.

Q150 Do you know that this was the actual magazine which was on the rifle at the time St.Denys was injured?
A150 No, Sir.

Q151 Can you swear that the rifle you examined was the actual rifle that did the damage?
A151 No, Sir. The rifle was brought to me and I was asked to examine it.

CROSS-EXAMINED BY THE PROSECUTOR

Q152 In order to fire a rifle you must place a round in the breech, close the bolt and press the trigger, is that correct?
A152 Yes, Sir.

Q153 Do you know if the rifle you examined was the one used by Ryckman?
A153 The rifle was brought to me for examination, Sir.

Q154 In the case of this long ammunition which is long, the casing or the projectile?
A154 The projectile, Sir.

Q155 In other words the projectile has not been placed sufficiently far into the casing?
A155 That is correct, Sir. Sometimes when the ammunition has been used a number of times in loading and unloading practice the projectile will loosen.

Q156 In your experience with Mark IV rifles have you found in many cases that the spring in the magazine has a habit of sticking?
A156 Yes, I would say in a good 10% of cases.

Q157 Were these rifles issued in this country?
A157 No, Sir, they were new rifles issued in Canada.

SUMMING UP BY THE DEFENCE IS SUBMITTED TO THE COURT IN WRITING.

SUMMING UP BY THE PROSECUTOR:

The prosecution has shown that A-87171 Tpr Ryckman, M.A. was negligent in the unloading of his rifle by unloading contrary to Army Regulations thereby causing it to be discharged and wounding M-51104 Tpr. St.Denys in the right leg causing him to be rendered temporarily unfit for duty.

COURT IS CLOSED TO CONSIDER THE FINDING.

COURT IS RE-OPENED.

PLEA OF MITIGATION IS SUBMITTED TO THE COURT IN WRITING.

COURT IS CLOSED TO CONSIDER THE SENTENCE.

SUMMARY OF THE DEFENCE 1 Mar 44

Tpr. Ryckman, M.A. A-87171.
The accused has been charged under section 40 A.A. with neglect to the prejudice of good order and military discipline in that he on Tuesday the 1st February 44 at 0450 hours, so negligently handled a rifle as to cause it to be discharged and injure Tpr. St. Denis in the leg.
It is a principle of English Law that the man is innocent till he is proven guilty. It is therefore up to the prosecution to prove beyond resonable doubt that the man was negligent. Sec 40, Am. 30 June 42 of the A.A. clearly states: Neglect to be punishable under this Act must be blame worthy, there has been no evidence produced to point to this. It also states that if the neglect is willfull or that it is intentional which in this case clearly does not apply because there is no evidence to prove this intended to injure anyone. If it is caused by an honest error of jugement and invlves no lack of zeal, no element of carelessness or intentional failure to take the proper action, it is equally clear that this is blameless and cannot be ground for a conviction. The evidence as presented clearly points out that there was no willfull negligence on the part of the accused and his only fault was a matter of jugement and error in the fact that he thought the rifle contained five rounds of ammunition instead of six. This error in jugement would not have resulted in injury had the proper care been takem by the N.C.O. of the guard and the other personnel the guard.
The accused received five rounds of ammunition at 0800 hours the 31 Jan 44 from Tpr. McVicar. He turned them over on his guard change to his next releif. The evidence shows clearly that Tpr. Hallman inserted six rounds in his magazine when coming on guard the next time in place of the costumary five rounds which had always been used. He presented Tpr. Ryckman with the six rounds magazine not making any mention that he had varied from practice by placing an additional round therein. The accused completed his guard and was releived at 0400 hours, by Tpr. Marshall on the 1st of Feb 44 who was armed with a Sten Gun and no change of magazine could be made. Since there was no change of magazine, and it had been the custom of the guard to unload their weapons in the guard room when releived by a man with a Sten Gun after dark so that there was no unusual change in the regular custom as permitted by the N.C.O. of the Guard. The accused c cleared his weapon, clearing only five rounds. Expert advice has brought to the attention of the court the possibility of a round lodging in the magazine and failing to clear properly. This round could have been dislodged by the last easing of spping of the weapon and then inserted in the barrell and naturally enough would fire when the trigger was released before applying the safety catch. Thus the accused took all necessary precautions and had no way of knowing that the sixth round was in the magazine.
In addition, the discipline of the guard was clearly weak, little of no supervision was supplied by the N.C.O. which slight irregularities in the guard room almost a normal practice. It was evident that the Corporal of the guard was either asleep or disinterested in the activity and supervisio of the guard. The military record and thouroughness of the accused was well known to the Unit as proved by the N.C.O's paying no attention to him. It is clear that the acion of the accused is not guilty nor is his action punishable under Sec 40 since amendment No. 30 June 42 points out if the accident is caused by an honest error of jugement and involves no lack of zeal and no element of carelessness or intentional failure to take the proper action. Since the evidence throughout this case shows that it actually happenned by error of jugement which is not punishable under this act, I would ask this case to be dismissed.

457.

PLEA OF MITIGATION

1 Mar 44

Tpr. Ryckman, M.A. A-87171

The accused has been with this unit since its formation and served on active service since June 1942. During that period he has an absolutely clean record. His reputaion of thoughroughness his general carcter and dependibility was so marked that the N.CO. of the guard was not even concerned over the relief which he receive at 0400 hours. I have been this man's troop Officer during 1942 and 43, I can verify his caracter and ~~since~~ punishment given under this charge would be very detrimental to his future service, He is definitely of N.C.O. calibre and would be promoted at the earliest vacancy in the establsihment. Since punishment is always a matter of discipline and an attempt to improve the efficiency of a particular soldier. I am of firm conviction that since he ahs been found guilty of technical breach of discipline, these facts sould be taken into consideration and the very minimum punishment should given, This man when not serving this regular company duty, is serving on the assembly line of NO. I C.E.A.U. which is the number one priority of the Canadian Army in England to-day. I would ask that this task not be ~~relieved~~ DEPRIVED of his services s nce he is a thourough and efficient man.

APPENDIX B

Trial of A-87171 Tpr Mahlon Archibald Ryckman, 30th Reconnaissance Regiment (The Essex Regiment) CAC C.A.

LIST OF WITNESSES FOR THE PROSECUTION

Major H.E. Foex, RCAMC, att. No. 2 Cdn Gen Hospital		
A-86981 Cpl. Balkwill, E.R.	30th Reconnaissance Regiment (The Essex Regiment) CAC C.A.	
A-87015 Cpl. Campbell, H.K.	30th Reconnaissance Regiment (The Essex Regiment) CAC C.A.	
M106380 Tpr. Hallmen, W.S.	30th Reconnaissance Regiment (The Essex Regiment) CAC C.A.	

LIST OF WITNESSES FOR THE ACCUSED

Nil

LIST OF EXHIBITS

Nil

J Nicol Lt

(J. Nicol) Lt & A/Adjt
30th Reconnaissance Regiment
(The Essex Regiment) CAC C.A.

Dated in the Field this 23rd of February 1944

Summary of Evidence in the Case of A-87171 Tpr.Ryckman, M.A.

Receipt is acknowledged of one copy of the s/n summary of evidence and one copy of the Charge Sheet.

Field
~~25 Feb 44.~~

.....

A-87171 Tpr. Ryckman, M.A.

APPENDIX E

I, A-87171 Tpr Mahlon Archibald Ryckman, desire to have an Officer assigned to represent me my trial by Court Martial.

I desire the services of Major J.N. Wood if he is available.

M.A Ryckman

(A-87171 Tpr Ryckman, M.A.)

In the field
23 Feb 44

SUMMARY OF EVIDENCE

in the case of

A-87171 Tpr Ryckman, M.A. 30th Reconnaissance Regiment (The Essex Regiment) C.A.C., a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the summary of evidence is taken on oath.

FIRST WITNESS For the Prosecution: A-86951 Cpl Balkwill, E.R. of the 30th Reconnaissance Regiment (The Essex Regiment) C.A.C., having been duly sworn states:-

I was Corporal of the Regimental Guard from 0800 hrs 31 Jan 44 until 0800 hrs 1 Feb 44. I was in charge of six men which comprised 2 guards, 3 on the gate piquet and 3 on flying piquet. The men on the gate piquet were A-87171 Tpr Ryckman, M.A. with a rifle, M-106630 Tpr Hallman, W.S. with a rifle and A-87266 Tpr Marshall, H. with a Sten. The gate piquet is on from 0800 hrs one day to 0800 hrs the following day. The flying piquet is on duty from 1600 hrs one day to 0600 hrs the following day. The same men come on duty every second day. The men of my guard were on duty from 0800 hrs Saturday 29 Jan 44 to 2400 hrs Sunday 30 Jan 44 and came back on duty again 0800 hrs Monday 31 Jan 44 to 0800 hrs Tuesday 1 Feb 44. The guard room was allotted 10 rounds of .303 amn and 36 rounds of 9 MM amn. The customary practice was to issue 5 rounds of amn to the gate piquet while on duty and 5 rounds to the flying piquet. In the case where one rifleman was relieving another rifleman on the gate piquet the man coming off guard would hand over his charged magazine to the man who relieved him. In the case of a man who possessed a Sten Gun who relieved a rifleman the rifleman would be marched back to the guard room where he would remove his charged magazine and clear his rifle before entering the guard room.

At 0400 hrs on Tuesday 1 Feb 44 Tpr Marshall who carried a Sten Gun relieved Tpr Ryckman, a rifleman, from the gate piquet. I was not present at the guard change because there was a man undergoing sentence, M-81104 Tpr St.Denys, C.M., and the other men of the guard present in the guard room had been on duty 20 hrs and were sleeping at the time. Rather than awaken them I watched the prisoner while the guard changed by themselves. When Tpr Marshall left to relieve Tpr Ryckman I laid down on an empty cot merely to get off my feet. Prior to the accident Ryckman had been a very dependable guard so I paid little or no attention to him when he entered the guard room at approximately 0405 hrs Tuesday 1 Feb 44. I noticed that he was unloading his rifle by the bolt action but did not realize at the moment what he was doing. I heard the report of a rifle and heard Tpr St.Denys groan. Almost immediately Tpr Ryckman, Cpl Campbell and myself examined St.Denys and found he had been shot in the leg. We then applied first aid to St.Denys. When the wound had been attended to I checked the amn ejected from Ryckman's rifle and found 5 live rounds. There was a spent casing in the Breech. I can definitely state that the rifle was either loaded with one round in the chamber and 5 in the magazine or charged with 6 rounds in the magazine and none in the chamber.

7.

At 0600 hrs when the flying piquet went off duty I checked and found they possessed 5 rounds. This means there were eleven rounds in the guard room--where the eleventh round came from I do not know. Ryckman told me that the cause of the accident was due to the fact that he thought there were only 5 rounds in his magazine and when he had cleared his weapon of 5 rounds he fired the action and a shot was heard. I sent for the M.O. and Orderly Sergeant. The M.O. arrived at approximately 0415 hrs. St.Denys was removed to the hospital on the M.O.'s orders accompanied by the M.O., the Orderly Officer and Cpl Campbell. When the Orderly Officer returned he placed Tpr Ryckman under open arrest.

The accused declined to cross-examine this witness.

.....
A-66851 Cpl Balkwill, H.K.

SECOND WITNESS For the Prosecution

A-87018 Cpl Campbell, H.K. of the 30th Reconnaissance Regiment (The Essex Regiment) C.A.S., having been duly sworn, states:-

I was Corporal of the guard which was on duty from 2400 hrs Sunday 30 Jan 44 until 0800 hrs Monday 31 Jan 44 at which time I was relieved by the new guard commander Cpl Balkwill. I had been granted permission to sleep in the guard room by SSM Turkington of HQ Squadron because my quarters were a long way from the guard room. I was taken on ration strength of HQ Mess. During the evening of Monday 31 Jan 44 and the morning of 1 Feb 44 I was sleeping in the Regimental Guard Room and was to take over as guard commander from Cpl Balkwill at 0800 hrs Tuesday 1 Feb 44. At approximately 0405 hrs the morning of 1 Feb 44 I was awakened by the sound of a shot. I got up immediately and noticed Tpr St.Denys, who was sleeping in the bed next to me, had been injured. His leg was bleeding quite freely. Cpl Balkwill and I applied a tourniquet and administered first aid while Tpr Ryckman went for the M.O. After the M.O. had taken care of St.Denys I accompanied him to the hospital and remained there with him until 0730 hrs at which time I returned to the regiment.

At 0745 hrs the morning of Monday 31 Jan 44 before Cpl Balkwill relieved me as guard commander I checked the amn which had been allotted to the guard room and found it to be correct i.e. 10 rounds of .303 amn and 36 rounds of 9 MM amn. Cpl Balkwill was in the room at the time but I cannot state definitely whether the amn was counted by him. However, I left the specified amount of amn in a small cardboard container on the top of the guard report which stated the correct amount of amn in the container.

At one time Tpr Ryckman was a member of my guard and I found him to be a very dependable and conscientious soldier. I was very surprised to find that

Tpr Ryckman was involved in this accident for I have always found him to be a very careful guard at all times.

The accused declines to cross-examine the second witness.

The above evidence has been read back to the witness.

H.K. Campbell
(A-87015 Cpl Campbell, H.K.)

THIRD WITNESS For the Prosecution

M-106690 Tpr Hallman, W.S. of the 30th Reconnaissance Regiment (The Essex Regiment) C.A.C., having been duly sworn, states:-

I was one of the men of Cpl Halkwill's guard from 0600 hrs Monday 31 Jan 44 to 0800 hrs Tuesday 1 Feb 44. At 0200 hrs 1 Feb 44 Tpr Ryckman relieved me from duty as gate piquet. We exchanged duties unexcorted by the Corporal of the guard. As we were both riflemen I exchanged my charged magazine with Tpr Ryckman taking from him his empty magazine. I personally loaded the charged magazine, which I exchanged with Ryckman, with 6 rounds of .303 amn and when I handed it to him I did not empty the rounds from the magazine and couldn't state whether he did. I did not till him there were 6 rounds in the magazine and I am unaware that he knew the number of rounds the magazine was charged with. After proving my rifle I entered the guard room, laid down and went to sleep. I was not awakened at the time of the acident and slep through until 0645 hrs 1 Feb 44.

Cross-examined by the accused.

Q-1 Were you told by the guard commander the number of rounds to charge the magazine with?

A-1 No, there was no specified amount.

Q-2 Did you understand that there should have only been 5 rounds in the magazine?

A-2 No.

The above evidence has been read back to the witness.

W.S. Hallman
(M-106690 Tpr Hallman, W.S.)

FOURTH WITNESS For the Prosecution

Major H.E. Fox RCAMC No 2 Canadian General Hospital having been duly sworn, states:-

M-51104 Tpr St.Denys was admitted to my service at 0600 hrs 1 Feb 44 suffering from a gunshot wound of the right lower leg. On admission X-Ray examination was carried out and under general anaesthesia wound toilet was carried out. At operation there was an entry wound on the postero-latero aspect of the leg, and a large gaping exit wound on the anterior aspect of the leg. One inch of fibula was destroyed and there was destruction of a number of muscles having to do with dorsi-flexion and eversion of the foot, and considerable loss of skin on the anterior aspect of the leg. After operation the wounds were packed with gauze and plaster of paris cast applied. On 16 Feb cast was removed and under general anaesthesia secondary suture of the posterior wound was performed in a tube inserted into the depths of the wound. It was not possible to close the anterior wound which must granulate in from the bottom and probably require skin graft. Penicillin was used on the posterior wound until the 24th Feb. He will probably be hospitalized another month at the least and there will be considerable degree of persanent disability which cannot be estimated as yet

The accused declined to cross-examine the fourth witness.

H.E. Foex .....
(H.E. Foex) Major RCAMC
No 2 Cdn Gen Hospitel

Do you wish to make any statement or to give any evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence.

The accused reserves his defence.

M.A. Beckman .....
(A-8717 Tpr Beckman, M.A.)

I certify that the foregoing summary of evidence consisting of four pages was taken down by me in the presence and in the hearing of the accused this 19th day of February 1944 and the 26th day of February 1944 having been deputed by the Commanding Officer to do so.

Rules of Procedure 4(c),(d),(e) and (f) have been complied with.

F.C. Shirriff .....
(F.C. Shirriff) Lt
30th Reconnaissance Regiment
(The Essex Regiment) C.A.C.

M-51104 Tpr St.Denys was admitted to my service at 0600 hrs 1 Feb 44 suffering from a gunshot wound of the right lower leg. On admission X-Ray examination was carried out and under general anaesthesia wound toilet was carried out. At operation there was an entry wound on the postero-latero aspect of the leg, and a large gaping exit wound on the anterior aspect of the leg. One inch of fibula was destroyed and there was destruction of a number of muscles having to do with dorsi-flexion and eversion of the foot, and considerable loss of skin on the anterior aspect of the leg. After operation the wounds were packed with gauze and plaster of paris cast applied. On 16 Feb cast was removed and under general anaesthesia secondary suture of the posterior wound was performed in a tube inserted into the depths of the wound. It was not possible to close the anterior wound which must granulate in from the bottom and probably require skin graft. Penicillin was used on the posterior wound until the 24th Feb. He will probably be hospitalized another month at the least and there will be considerable degree of permanent disability which cannot be estimated as yet

The accused declined to cross-examine the fourth witness.

.....
(H.E. Foox) Major RCAMC
No 2 Cdn Gen Hospital

Do you wish to make any statement or to give any evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence.

The accused reserves his defence.

.....
(A-87171 Tpr Brokman, M.A.)

I certify that the foregoing summary of evidence consisting of four pages was taken down by me in the presence and in the hearing of the accused this 19th day of February 1944 and the 26th day of February 1944 having been deputed by the Commanding Officer to do so.

Rules of Procedure 4(c),(d),(e) and (f) have been complied with.

.....
(F.C. Shirriff) Lt
30th Reconnaissance Regiment
(The Essex Regiment) C.A.C.

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number A-87172 | Rank Tpr | Name Mahlon Archibald Ryckman | Regiment (or unit) (The Essex Regiment) CAC, C.A.

1. The following is a fair and true summary of the entries in the Regimental/~~and Squadron, Battery~~ Service and General/~~Air Force Act~~ Conduct sheets/~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

~~Within last 12 months~~ Since enlistment or appointment

~~For~~ Nil times / Nil times

For ..... times / ..... times

For ..... times / ..... times

For ..... times / ..... times

~~For ..... times~~

~~Number of instances of gallantry or distinguished conduct~~

There are no entries in the conduct sheets of the accused.

~~Nores. If the charge is for drunkenness, the entries for drunkenness must be stated separately.~~

2. The accused has not been previously convicted

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act / Air Force Act, and imprisonments with trial under A.A. 72 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~The accused at the present time is under sentence for ..... beginning on the ..... day of ..... A.M.~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and Nil days in military custody, making a total of Nil days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to ~~his record of service~~ attestation paper is 26 years 7 months

6. The date of his ~~commissions~~ attestation recited in his ~~record of service~~ attestation paper is 8 Oct 42

7. ~~The service which the accused is allowed to reckon towards discharge is ..... The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.~~

8. ~~The accused is in possession of or entitled to no air force~~ military decoration, or ~~air force~~ military ~~reward for his service~~

9. The accused is in possession of or entitled to ~~State any air force decoration or reward~~ military

~~(possession of or entitlement to).~~ ~~The accused before he was made a warrant officer last held~~

10. ~~If the accused is a warrant officer.~~ ~~Air Force~~ ~~the regimental rank of ..... A.M.~~

M.F.B. 458
MAM. 8-11-(1937)
H.Q. 1772-39-620
A.F.B. 398

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A-87171	Tpr	Mahlon Archibald Ryckman	30th Reconnaissance Regiment (The Essex Regiment) CAC, C.A.

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental ~~and Squadron, Battery~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
~~For~~	Nil times	Nil times
For	times	times
For	times	times
~~For~~	times	times

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

There are no entries in the conduct sheets of the accused.

~~Norn.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.~~

2. The accused has not been previously convicted

~~or~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act~~ ~~A.F.A. 73~~ ~~Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in ~~Air Force~~ civil custody, and N/L days in military custody, making a total of N/L days in custody, of which N/L days were spent in hospital.

5. The present age of the accused according to ~~his record of service~~ attestation paper is ~~25 years 7 months~~

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 8 Oct 42

7. ~~The service which the accused is allowed to reckon towards discharge is~~

8. ~~The accused is entitled to reckon service for the purpose of determining his pension, etc.~~

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward ~~for is in possession of or entitled to). State any air force decoration or reward~~ ~~military~~

10. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force/Permanent Force/unit the rank of ..... dated ..... and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

In the rank of ..... Date of promotion.....
In the rank of ..... years.
In the rank of ..... years.
In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army/Air Force Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Name ..... Unit ..... of ..... Regiment .....

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 1. day of March 1944 (J.Nicol)Lt

30th Reconnaissance Regiment (The Essex Regiment) CAC C.A.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

Mahlon Archibald

No. A 87171 Name HYCKMAN

30th Recce Regt (Essex R)

Sqn., Battery, or Company: H.Q. Corps: C AC

Date of enlistment: 3 Jul 42

G.C. Badges:

Tradesmen's Rates of Pay:

M.F.M. 6 (A.F.B.122)

No. and date of last drunk:

Period not reckoning towards freedom from extra fine:

Sheet No. One

Signature O.C. Company, etc.:

Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Dundurn Sask	22 Jan 43			CERTIFIED NO ENTRY					

CERTIFIED TRUE COPY as of 1 MAR 44
of Original in my possession

.....
(J.R. Hanley) Capt
2 i/c "H.Q." Sqn
Custodian of Original Document

P.T.O.

NNN·146

TPR RYDBERG AH·

RECORDS AT CMHQ IN AB 180 - WW-146

RECEIVED 14 JUN 1944 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CPAMP (To Brd of APAM) Form W.B./1808 (1944)

4/388

Convened by Order of Brig J.C. Jefferson, DSO, Comd 10 Cdn Inf Bde dated 28 May 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent and substantive rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D 71085	Tpr		Ashton Harry	Rydberg	29 Cdn Armd Recce Regt

PROCEEDINGS REVIEWED 14 Jun 44

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

Photo'd 12/44 DJ Sec GHQ 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 30 May 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, ~~if any~~, and Offrs under instr ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for terms and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 5. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. President to accused: ~~Do you object to as interpreter?~~ Ans

~~The Interpreter is sworn.(1)~~ ~~Do you object to as shorthand writer? Ans~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj A.K. Stirling	Alq R
Member	Capt G.E.Y. Theriault	3 Cdn A Tk Bty RCA
Member	Lt G.U. Fullerton	MG Cdn Indep MG Coy (N.B. Rangers)
Judge-Advocate	Nil	
Prosecutor	Maj T.B. Nash	29 Cdn Armd Recce Regt
Defending Offr	Lt G.E. Irving	29 Cdn Armd Recce Regt

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans ~~NO~~ YES (2)

(1. RP 26, 27, 109, 111. List of offrs under instrs will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DF p 2.)

A8. The accused D71085 Tpr Ashton Harry Rydberg before arraignment ~~make(s) (no)~~ plea

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 37), or by one of several accused charged jointly to be tried separately (RP 18, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to KsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused:

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for beginning on (date)~~ Nil (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 17 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

~~To undergo 56 days F.P. and forfeit 56 days Pay (Sch sat supra)~~

To suffer 28 days F.P. for 56 days and to forfeit all ordinary pay for a period of 56 days.

(Sgd) Judge-Advocate, if any. 30 May 44 Date awarded. (Sgd) A.K. Stirling Maj President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 577. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding & sentence of the Court but remit 22 days F.P. of the sentence

~~Direct that the accused be not committed to prison or detention barracks until further ordered.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) J.C. Jefferson Brig

Date 6 Jun 44. Commanding 10 Cdn Inf Bde. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D71085 Tpr Ashton Harry RYDBERG	7 June 44	A.K. Stirling Maj

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3 and MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (~~no~~) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the first charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the first charge(s), ~~and allowed on the (s) charge(s)~~, and that, accordingly, the trial will proceed on the former, ~~but the accused is (are) found Not Guilty of the latter charge(s)(4)~~. R.A.D.
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(3) You may call witnesses in your defence and ~~one will be sworn first~~. Whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. No. Do you intend to call witnesses on your behalf? Ans. Yes. Are they witnesses as to character only? Ans. No.
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (~~are~~) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), ~~if any, of Not Guilty~~, and states to the accused that the finding(s) of the Court on the first charge(s), being subject to confirmation, will be promulgated later.(1)
~~The President announces that the accused is found Not Guilty on all charges and is to be released forthwith and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. No
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. A and Ex. B respectively.(3)
(1. MFB 353 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. No.
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

EXHIBIT "A"

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-30-620
A.F.B. 200

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D71085	Trooper	Ashton Harry RYDBERG	29 Cdn Armd Recce Regt

1. The following is a fair and true summary of the entries in the Service and General Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For Conduct to the prejudice, etc	1 times	1 times
For Disobeying a lawful command	times	1 times
For Absence without leave	1 times	times
For	times	times

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

3. The accused is not under sentence at the present time.

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and six days in military custody, making a total of six days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 25 years

6. The date of his attestation specified in his attestation paper 24 March 43

9. The accused is in possession of or entitled to no military decoration, or military reward (or is in possession of or entitled to). State any military decoration or reward.

~~The [illegible] of an officer~~ The accused holds in the Royal Canadian ~~Air Force~~ Permanent Force the rank of unit

dated , and in his regiment (or corps), the rank of

dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number Rank Unit

Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this nineteenth day of May, 1944 R H Allsopp Capt

(R H Allsopp) Capt, Adjt
29 Cdn Armd Recce Regt

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked EXHIBIT A signed by the president, and annexed to the proceedings.

A K Sterling Maj

"B" Cpl

No. D 71085 Name RYDBERG A H

Sqn., Battery, or Company } A

Corps C A C

Date of enlistment } 24 Mar 43

O.C. Badges }

Tradesmen's Rates of Pay }

M.F.M. 6 (A.F.B. 122) 100M—11-41 (2609) H.Q. 1772-99-1452

No. and date of last drunk }

Period not reckoning towards freedom from extra fine }

Sheet No.

Signature O.C. Company, etc. } LK Beard Capt

Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Brampton, ont	10-5-43	Tpr		Disobeying a Lawful command, in that he at Brampton, Ontario, did appear on Parade without a hair cut after being so ordered by his Platoon Sgt. A A Sec 42(2)	Sgt Zimmer Cpl Armstrong & L/Cpl Davis E	14 days extra duties	10 May 43	Lt Col R V E Connour	
North Bay, ont	23 jun 43	Pte		Cond. to the prej. of good order and Mil discp. at 0735 hrs 23 Jun 43 assumed an insubordinate attitude toward a superior officer. A A Sec 40	Cpl Moore L/C Goldsmith Cpl Boas Doc. Ford	7 days C B.	23 jun 43	W J Baird Major	
North Bay ont	30 Jun 43	Pte		AWL from 2300 hrs 30 Jun 43 until 0630 hrs 1 July 43. Total absence 8 hrs 30 mins A A Sec 15(1)	Lt Retherick Cpl Boas Doc. Ford	Admonished	1 July 43	R J Hutchison Capt	Forfeits 7 days pay & R & I 14 1(a)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED TRUE COPY OF ~~XXXIXXX~~ ORIGINAL MFM 6 HELD IN MY CUSTODY R H Allsopp Capt. (R H Allsopp) Capt & Adjt Officer i/c Regimental Records 29 Cdn Armd Recce Regt					

SUMMARY OF EVIDENCE
in the case of
D/1085 Tpr Ashton Harry RYDBERG
29 Cdn Armd Recce Regt (S Alta R)

CHARGE: AA Sec 8(2). Using Insubordinate Language to his Superior Officer.

The Commanding Officer directs that the evidence be taken on osth.

FIRST WITNESS: M44852 Cpl Watkins, H, 29 Cdn Armd Recce Regt (S Alta R), having been duly sworn, states:

I was on 13 May 44, and still am, a corporal in the 29 Cdn Armd Recce Regt (S Alta R). At approximately 0030 hrs of 13 May44, I was awakened by the accused singing. I told him to be quiet and go to bed so that he would not disturb the other men. He, Tpr Rydberg, A H, the accused whom I recognize here, said to me, "Fuck you, I don't have to take orders from you, you are just a corporal, you haven't had much exrerience. We are fighting for democracy." He continued to sing. In a few minutes I again ordered him to be quiet. He said, "You're just a suck-holing bastard." He continued singing. He followed again with "You're just a suck-holing bastard to Campbell. I've done detention before, you can put me under close arrest if you want to." I placed him under open arrest at 0035 hrs. He continued talking and singing and went to bed. In the morning when I awoke him at reveille I asked him if he remembered what he had said last night. He said, "Yes". At 0930 hrs 13 May 44 the accused called me over and said, "You had better get me out of the troop before I cause any more disturbance". I told him he had better see the troop officer. He told me, "You are supposed to do that." I told him I would see Lieut Campbell about it.

Question to the Witness:
Q.1 Was the accused drunk, in your opinion?
A.1 The accused was slightly intoxicated. H Watkins

The Accused declines to cross-exsmine this witness.

SECOND WITNESS: M45577 Tpr Nissen, A, 29 Cdn Armd Recce Regt (S Alta R), having been duly sworn, states:

I was on 12 May 44, and still am a trooper in the 29 Cdn Armd Recce Regt (S Alta R). On Friday, 12 May 44, at 2345 hrs, after a dance held in a British camp, I checked out of the guard room and walked to harbour accompanied by the accused, Tpr Rydberg A H, whom I recognize here. We spoke of the events of the evening on the way home and I left the accused, going to my own tent.

Question to the Witness:
Q.2 Was the accused under the influence of drink?
A.2 He didn't seem to be. Augus Nissen

The accused declines to cross-examine this witness.

QUESTION TO THE ACCUSED:
"Do you wish to make any statement or to give evidence upon osth ? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

ANSWER BY ACCUSED: I have nothing to say.

Certified that the Rules of Procedure 4(c),(D),(E),(F)&(G), have been complied with.

Taken down by me in the Field in the presence and hearing of the accused this 17th day of May, 1944.

K F Martin
(K F Martin) Lieut
Officer detailed to take
Summary of Evidence.

LIST OF WITNESSES

in the case of

D71085 Trooper Ashton Harry RYDBERG
29 Cdn Armd Recce Regt (S Alta R)

FIRST WITNESS: - M44852 Cpl Watkins, H
29 Cdn Armd Recce Regt (S Alta R)

SECOND WITNESS: - M45577 Tpr Nissen, A
29 Cdn Armd Recce Regt (S Alta R)

R H Allsopp Capt

In the Field
19 May 44

(R H Allsopp) Capt
Adjutant
29 Cdn Armd Recce Regt (S Alta

ED ELECTED TRIAL BY COURT MARTIAL

CHARGE SHEET

The accused No. D/71085 Trooper Ashton Harry RYDBERG, 29 Can Armd Recce Regt (S Alta R), a soldier of the Canadian Army Overseas, is charged with:--

CHARGE 1
Sec 8(2)
Army Act

WHEN ON ACTIVE SERVICE, USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER,

in that he, in the Field, on 15 May 44 at 0035 hrs, after having been ordered by M/48582 Cpl Watkins H, to keep quiet and go to bed, said to Cpl Watkins, "Fuck you, we're fighting for democracy. I don't have to take orders from you. You're just a corporal, you haven't had much experience. You're just a suck-holing bastard, that's all. You're just a suck-holing bastard to Campbell. I've done detention before, you can put me under close arrest if you want to".

(G D Wotherspoon) Lt Col
Commanding
29 Can Armd Recce Regt (S Alta R)

In the Field
19 May 44

To be tried by Field General Court Martial.

(J Jefferson)

Field.
28 May 44

afds

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40/PAS/1697 (3868)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D.71095	Tpr		Ashton Harry	RYDBERG	29 Cdn Armd Recce Regt

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 25 May 44 endorsed by me, (or by an officer under my command), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior authority.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offr appointed or detailed hereunder.

4. I am unable to appoint to this Court, as a Bd Offr as Pres authy for the reasons hereinafter stated.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	A K Stirling	Alq R

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by 3 Cdn A Tk Bty RCA	
Lt	To be detailed by Linc & Welld R	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	To be detailed by 10 Cdn Inde MG Coy	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

J C Jefferson (Signed personally. RP 105 fn 2.) Brig (Rank.)

(J C Jefferson) Brig
Commanding 10 Cdn Inf Bde
Convening Officer.

Date 28 May 44

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

ahs

30 May 44

This is to certify that I have today examined D71085 Tpr Rydberg, A H, and find him fit to undergo trial by FGCM.

Medical Officer

Due to an error on the part of the Pres of the Court it was not considered that the Lieut detailed by the QC. for Right had sufficient service (2 years). The requirement of two years service as being sufficient has since been brought to his attention. Because of this the Lieut detailed as acting member by the 10 Gen ~~Inspection~~ R. F. Cay sat on the Court as member

A K Sterling Brig

Field 30 May 44

Record of Proceedings of the trial by FGCM of ~~M~~ 1085 Tpr Ashton Harry Rydberg, 29 Cdn Armd Recce Regt, held in the Field, 30 May 44.

Opening address by Prosecutor- From the evidence which I shall bring out I will prove to the Court that the accused did use insubordinate language to his superior offr and that he did so while of sound mind. I shall prove to the court that the remarks made to his superior offr he had every opportunity to retract these remarks and did not do so. Instead he made further remarks and he should therefore be found guilty as charged.

1st Witness for Prosecution-

L44852 Cpl Watkins, H. Crew Comd 4 Tp, A Sqn, 29 Cdn Armd Recce Regt (duly sworn)

Q. At approx 0030 hrs night 12/13 May 44 Tpr Rydberg came home and although you were asleep at the time you woke up. Would you relate to the court what happened at that time.

A. I was wakened by Tpr Rydberg at said time and he was singing. I asked him to keep quiet so as not to wake the rest of the lads. He said to me " Fuck you, we are fighting for democracy, I don't have to take orders from you". He continued singing. I waited a while and I ordered him to keep quiet again. He said "Fuck you, you are just a suck-holing bastard", he then said " You are just a suck-holing bastard to Campbell", referring to my Tp offr. He then continued singing and talking to himself.

Q. Was he drunk or sober?

A. He was to my judgement slightly intoxicated.

Q. At 0900 hrs you had another conversation with him, tell the court the certain answers of the conversation and the conversation that took place.

A. At said time I was walkinh back to our orderly room and was called by Tpr Rydberg, and he said to me, " You had better get me out of the crew and out of the tp before I cause any more trouble." I said to him, "You had better see the Tp Offr. He said to me, "That is what you are for." I said that I would see the Tp offr about it.

Q. In the allotment of duties has Tpr Rydberg received a square deal?

A. He has been dealt with just the same as the rest of the crew.

Q. The previous night when you were talking to him, that is the night of the 12/13 May, was his voice clear or thick ?

A. His voice was clear .

The Witness is Cross Examined by the Defence

Q. Has Tpr Rydberg on other occassions asked you to get him out of the crew or ~~xxxx~~ a transfer from the Regt.

A. He has asked to get out of the Tp, and it was put into an offr's hands, there was no deffinite question referring to the crew itself.

Q. On the ~~morning of the~~ night 12/13 May 44 when the accused awakened you, were there others in your tent ?

A. Yes, there were three others besides myself.

Q. Were these three others wakened by the accused.?

A. No Sir.

The witness is questioned by the Court

Q. When was this application for transfer made by the accused ?

A. I would say approx three weeks before.

Q. Had he made any applicationfor transfer previous to that ?

A. No Sir. RP 83(1) complied with adv.

2nd Witness for the Prosecution-

M 45577 Tpr Nissen, A., 29 Cdn Armd Recce Regt. (duly sworn)

Q. Would you tell the court your number, rank, name, and your job in this Regt.

A. I am M45577 Tpr Nissen, A., I am a dvr of a tk.

Q. On the night 12/13 May 44 did youm see Tpr Rydberg at a dance ?

A. Yes Sir.

Q. What time did you leave the dance ?

A. Approx 1145.

Q. Who left the dance with you ?

A. Tpr Rydberg.

Q. What time did the two of you reamh the harbour ?

A. Approx 0020 hrs.

Q. How did you get home from the dance ?

A. We walked home.

Q. What was your general conversation on the way home ?

A. We just talked about the events of the evening.

Q. Was Tpr Rydberg drunk or sober ?

A. In my opinion he seemed all right.

The Witness is Cross Examined by the Defence

Q. At the dance had you seen Tpr Rydberg drinking ?

A. Yes Sir

Q. At any time during the evening had the accused been doing anything that was out of line ?

A. There was only one thing I noticed, he was sitting on the band stage singing over the microphone.

Q. Did you do anything about this ? If so why ?

A. I tried to speak to him, there was no response so I left him alone.

Witness is questioned by the Court

Q. Is it being out of line to sing over the microphone.?

A. Probably not during the dance, but this was during intermission.

Q. You felt that he was being out of line by doing this ?

A. Yes Sir.

RP 83 (h) - complied with. AHA

3rd Witness for the Prosecution

Maj A.Lavoie, 29 Cdn Armd Recce Regt. (duly sworn)

Q. Will you tell the court your rank, name and appointment ?

A. I am Maj Lavoie, Sqn Leader, A Sqn, 29 Cdn Armd Recce Regt.

Q. Is Tpr Rydberg in your Sqn ?

A. Yes he is.

Q. Did he appear before you on orders on the morning 13 May 44 in connection with this charge ?

A. He appeared before me on or about that date charged with insubordination. The charge was made out under Sec 40 of the A.A. Conduct to the prejudice of good order and military discipline in that he did use insubordinate language to a superior offr. I listened to the evidence and asked Tpr Rydberg what he had to say. Rydberg replied " I plead guilty to all the charges, but I should have been charged with drunkeness, not for insubordination". I remanded the case to the C.O. After the accused was paraded from my presence I re-framed the charge and charged him under the proper section of the A.A. The preliminary hearing on the newly framed charge did not come up before me due to my absence on duty, Capt McKenzie 2 i/c of the Sqn heard the charge and remanded the case to the C.O.

Note- As this witness had not given evidence in the Summary of Evidence RP 76 were complied with. The Defence had no objection. The Defence did not cross examine this witness.

Witness is questioned by the Court

Q. When did Tpr Rydberg apply for transfer from your Sqn ?

A. A few days before this offence took place.

RP 83 (h) complied with. AHA

The Prosecution is closed

The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on this charge. Address of the Defence;

In the evidence put forth before the court by the Prosecutor the only evidence of the accused having used insubordinate language is that of the Cpls word. The fact that the accused has been unsatisfied in his crew and has caused some disturbances is shown by the fact that he has applied for transfer. The accused being under the influence of liquor does not remember using the insubordinate language.

Reply by the Prosecuting Offr

At this time I wish to bring certain points before the court which while they are aware of them, I wish to emphasize again.

When Tpr Rydberg came home that night in question and started making a noise Cpl Watkins asked him rather than ordered him to be quiet. When he still persisted, only then was he ordered to keep quiet.

The defence has brought out that Tpr Rydberg was anxious to get a transfer out of the Tp or out of the Regt. I submit that this has nothing to do with the case in question and can not be used as an excuse for his actions, as it is impossible for a Sqn Ldr to satisfy all wishes of the individual members of his Sqn.

The defence has stressed that he only made a small amount of noise and did not wake any other members of the crew. I submit that this has no bearing on the case and that in any case he was ordered to keep quiet and did not do so.

The defence has brought out the fact that he was "out of line" at the dance. I submit that this does not prove that he was under the influence of alcohol as any one with a natural inclination to show off would not need the stimulation of alcohol.

Tpr Rydberg left the dance at approx 2345 hrs and according to the evidence of Tpr Nissen he arrived home at approx 0030 hrs and had been walking all the time. Assuming that he had been under the influence of alcohol earlier in the evening he would have ample time to get sober on the way home and as Tpr Nissen pointed outthey talked about the events of the evening as any two normal people coming home from a dance would do.

1st witness for the Defence

L84550 Tpr Holms, R, 29 Cdn Armd Recce Regt (duly sworn)

Q. Will you tell the court your rank, name, number and job in the Sqn.

A. I am L84550 Tpr Holms, R. operator OAC.

Q. Will you tell the court what your occurences were with the accused on the night 12/13 May 44.

A. On that night my pal Tpr Bell and I walked down to the MAAFI and met Tpr Rydberg. We had a round of beers apeice. Tpr Rydberg met an English soldier and left us.

Q. During the evening did you see Tpr Rydberg drinking on any other occasion ?

A. I saw him drinking with the English soldier.

RP. 82(1) complied with AK.

The Prosecution did not cross examine this witness

2nd Witness for the Defence

M36079 Tpr Bell, J.A. 29 Cdn Armd Recce Regt.

Q. Will you tell the court your number, rank, name.

A.. I am M36079 Tpr Bell, J.A.

The questions and answers in the evidence of Tpr Holms were read to Tpr Bell.

Tpr Bell corroborates the evidence given by Tpr Bell.
No cross examination of this witness by the Prosecution.
R.P. (3)(b) complied with ~~all~~.

Address by the Defence

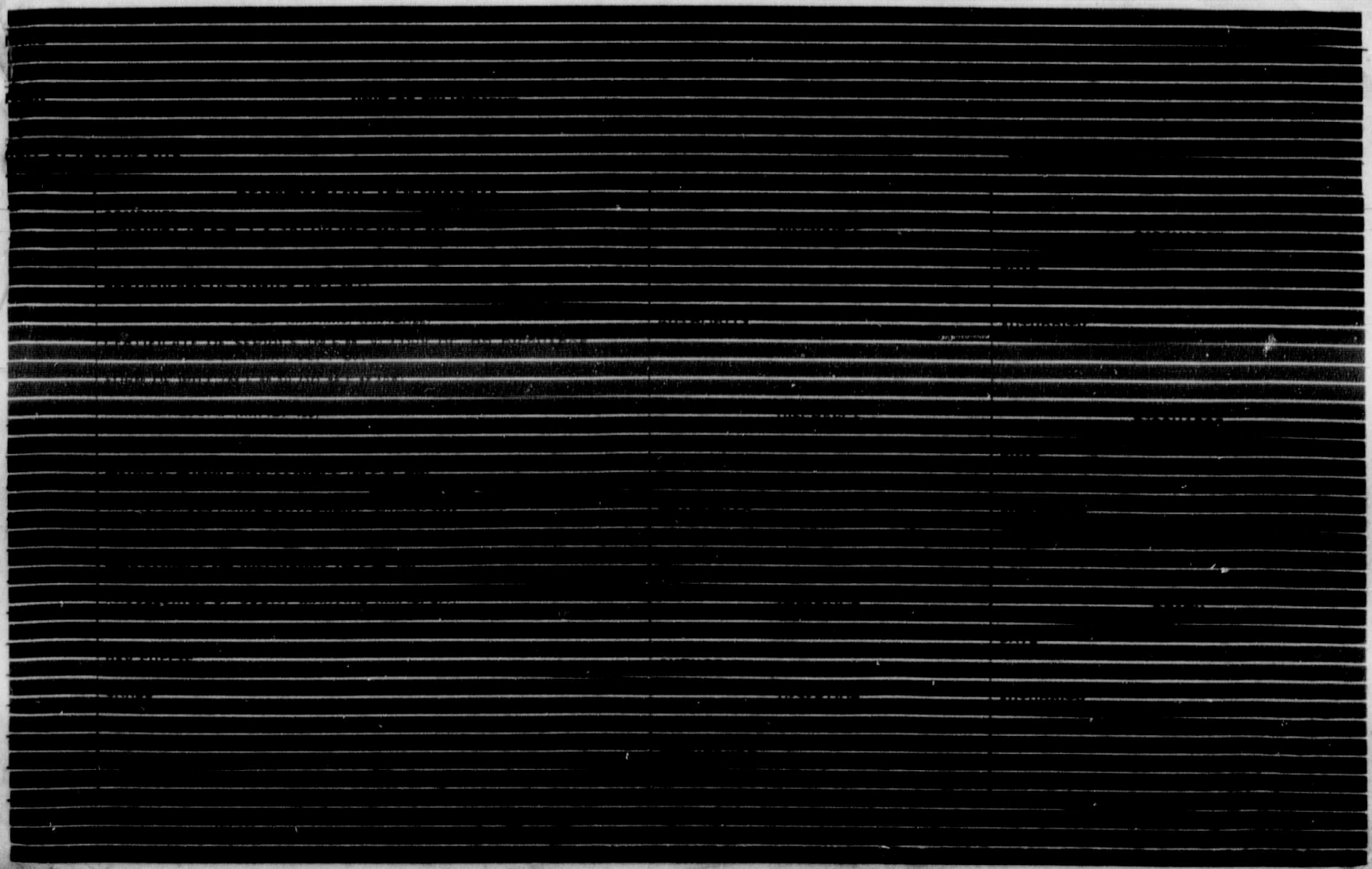
From the evidence which has been given the accused has been charged with using insubordinate language to his superior offr. I have showed to the court that the accused had been drinking on that evening. Due to the influence of liquor he may have said something that evening. He dose not remember having used this insubordinate language. Cpl Watkins admits that the accused was slightly intoxicated and that he had also dissatisfied in his crew. He has had trouble with the Cpl before as shown by his desire for a transfer. We have only the Cpls word to say that insubordinate language was used that evening.

~~The evidence of each witness was read back to him at the end of his testimony.~~

~~Certified that Rules of Procedure 4 (c) (6) and (c) have been complied with.~~

(A.E. Stirling Maj)

2 OF
GCM-1-6 WOLL REM GN. Pg 1



RECORDED AT CMHQ IN AB 150, "C" A.G.P. & G.C.M. - 1 - 6

A

Army Form A 9

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a General Court-Martial held at [illegible] Italy on the 25th day of April 1946 by order of Major-Gen G. Vokes, CB CBE DSO

Commanding 3 Cdn Inf Div CAOF

dated the 18th day of April 1946

President.

Brigadier W.J. Megill, DSO - 2/9 Cdn Inf Bde CAOF

Members.

Lt-col D.C. Cameron, DSO and Bar, ED - 3 SD & G Regts CAOF

Lt-col E.H. Hodson, DSO - 2/3 Cdn A Tk Regt RCA CAOF

Maj S.L. Dymond - 3 CH of O (MG) CAOF

Maj N.W. Reilander - 2/3 Cdn A Tk Regt RCA CAOF

Major J.R. Miquelon, 3 Incr 'B' (CAOF) Cdn JAG O/S Judge Advocate.

Trial of* L.7098 WO I (RSM) George John Ryder, HQ RCASC CAOF

Medical Certificate

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that [illegible] is not available to serve owing to [illegible].

[illegible] waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt D.R. Gaitens, 2/3 Cdn Inf Div Tps Coy RCASC CAOF

[illegible], or defending officer† Major T.G. Watt RCASC

At 1000 o'clock the Trial commences.

The order convening the Court is read, and is marked 'A' signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

No Sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

(1)

CAOF Bk II
p.9

PROCEEDINGS REVIEWED
20 Nov 46
Major,
DJA
HQ 3 Cdn Inf Div (CAOF)

RECEIVED
MAY 20 1946
JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED
11 MAY 1946
Major,
DJA
HQ 3 Cdn Inf Div (CAOF)

Certified true copy
[illegible]

B

The President, members and judge-advocate are duly sworn

The following officers under instruction are duly sworn.
Capt R.M. McLeod, 1 Det (A) Cdn JAG Overseas

Q. to accused: Do you objset to P.4610 WO II(QMS) Crone, WJ, 3 Inor 'B' (CAOF) Cdn JAG Overseas acting as shorthand writer?

Answer: No sir.

The shorthand writer is duly sworn.

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 86 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you which you have heard read ? *Question to the accused.*

Guilty sir. *Answer.*

~~Are you guilty or not guilty of the second charge against you, which you have heard read ?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the third charge against you, which you have heard read ?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read ?~~ *Question.*

Answer.

The accused having pleaded Guilty to the first charge , the provisions of Rule of Procedure 35 (B) are here complied with.
Second charge withdrawn in accordance with provisions of RP 35(C).

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

CHARGE SHEET

The accused, L.7098 Warrant Officer Class 1, (Regimental Sergeant-Major) George John RUDER, Headquarters RCASC (CAOF), a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 11
Army Act

WHEN ON ACTIVE SERVICE NEGLECTING TO OBEY CANADIAN ARMY ROUTINE ORDERS (21 ARMY GROUP)

in that he

in the Field, in Germany, on 16 Mar 46, when proceeding from Germany to Holland, had in his possession one hundred and twenty-one (121) Pounds in English currency and forty-one (41) Dollars in American Currency contrary to Canadian Routine Order (21 Army Group) 1149, as republished in Unit Part I Orders No. 389 dated 12 Feb 46.

SECOND CHARGE
Alternative)
Sec 40
Army Act

[redacted] SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, in Germany, on 16 Mar 46, when proceeding from Germany to Holland, was improperly in possession of one hundred and twenty-one (121) Pounds in English Currency and forty-one (41) dollars in American Currency.

"N.H. Colling"
(N.H. Colling) Lt-Col
Comd RCASC
3 Cdn Inf Div C(AOF)

In the field
16 Apr 46

To be tried by General Court Martial.

"C. Vokes"
(C. Vokes) Maj-Gen
GOC 3 Cdn Inf Div CAOF

In the Field
18 Apr 46

B2

"N.J. Megill Brig"

MEDICAL OFFICER'S CERTIFICATE

I certify that No 1.7098 MEM(NO 1) G.J. Ryder, HQ RCASC 3 Cdn Inf Div CAOW
is fit to undergo trial by Court Martial.

"I Harper" Capt
Signature of Medical Officer

Oldenburg
25 Apr 46

CC

Proceedings on Plea of Guilty.

* To be struck out if case not "G" or "Not Guilty" has been recorded.

*[The Court having been re-opened the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused L.7098 WO I(RSM) George John Ryder, HQ RCASC CAOF is found guilty of the first charge.

†[The summary (or abstract) of evidence is read, marked 'B' signed by the President, and attached to the proceedings.]

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. No Sir

~~The accused in mitigation of punishment says —~~

~~[or hands in a written statement which is read, marked , signed by the President, and attached to the proceedings.]~~

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

Def Offr: There are no actual witnesses as to character sir, but I would like to submit to the Court a written statement made by Lieutenant-Colonel Colling, who is at present absent in the UK.

Answer.

Evidence as to character.

The statement referred to by the Defending Officer is submitted to the Court, read by the President, marked 'J' initialled by the President and annexed to the proceedings.

PROCEEDINGS ON CONVICTION BEFORE SENTENCE

Question by the President: Have you any evidence to produce as to the character and particulars of service of the accused?

Answer by the Prosecutor: Yes sir, AF B296 and certified true copy of MF M6.

The Prosecutor produces Statement as to Character and Particulars of Service and certified true copy of Conduct Sheet, purporting to refer to the accused, which he submits to the Defending Officer for examination and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163 (1)(g)(h), and (ii) they purport to refer to a soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked 'K' and 'L' respectively.

Question by the President: Do you wish to address the Court in mitigation of punishment?

Answer by the Defending Officer: Yes sir. Sergeant-Major Ryder has a record of service that can be looked back on with pride. He served with the Canadian Army for three and a half years in World War I, attaining the rank of Corporal and in 1918, he won the Military Medal. In this present emergency he joined the Army on the fifth of September 1939, was made a Sergeant the same day and won his appointment as R.S.M. in Italy in December 1944. Early in 1945 he was mentioned in dispatches.

Sergeant-Major Ryder was sent to C.M.F. in January 1946 at the special request of Lieutenant-Colonel Colling.

The charge against Sergeant-Major Ryder is one of disobeying an Army Order which in turn is based on a Foreign Exchange Regulation of the United Kingdom. This Foreign Exchange Regulation controls the flow of Sterling Currency out of the United Kingdom.

The Army Order forbidding the retention of Sterling Currency has been well publicized and repeated but the reason why there should be such an order has not been made known to the troops. The average officer doesn't really know or care why this order is in effect. Sergeant-Major Ryder was a butcher in civilian life and, although he is an intelligent man, he is not versed in International Finance. The current money credit or deficit of the United Kingdom in any given foreign country is of no interest to him.

Sergeant-Major Ryder enjoys playing cards and during his service on the continent has won a considerable amount of money. The losers sometimes paid off their debts in Pound Notes or Dollars. It is the feeling of the average person that dollars or pounds Sterling represent real tangible money as opposed to the paper money of any of the countries through which the Canadian Army has fought and so the average person wants to keep that real money.

Sergeant-Major Ryder was taking the currency to Holland to leave it in safe-keeping with the young lady. His plans for civilian life are to take his discharge in Canada, spend a month or six weeks there in order to settle some business affairs and then to return to Germany to take up a post with the Control Commission. The young lady with whom the money was to be left wants to emigrate to America. She does not expect to be able to

go before next winter and the thought was that this money in question would finance a nice leave together in England before Sergeant-Major Ryder assumes his duties with the Control Commission.

The Summary of Evidence in this case contains no evidence or suggestion that Sergeant-Major Ryder had any black-market dealings or that he contemplated selling the Sterling or American currency to European Nationals at a premium. The offence is that having acquired the currency on the continent and not having the privilege of depositing the money in his pay account, he wanted to take the money to the UK where he could legally enjoy the benefits of it.

The defence respectfully suggests to the Court that in attempting to do this Sergeant-Major Ryder did contravene the letter of the law but did not contravene the spirit of the law. Should the sentence in this case be a severe one, it will jeopardize the position of the accused with the Control Commission of Germany and so have an effect on the future earning power of Sergeant-Major Ryder.

President: The Court is now closed to consider the sentence and the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.

F

SENTENCE

The Court sentence the accused 1,7098 Warrant Officer Cl 1 (Regimental Sergeant Major)George John Ryder, Headquarters RCASC (CAOF) To be reduced to the rank of Warrant Officer Cl II and to be severely repreimanded.

"J.R. Miquelon" Major
Judge Advocate

"W.J. Megill" Brig
President

25 Apr 46

I confirm the finding and sentence of the Court

In the field
30 Apr 46

"C Vokes"
(C Vokes)Maj-Gen
GOC 3 Cdn Inf Div CAOF

Promulgated and extracts taken.

In the Field
1 May 46

"J. Malcolm" Capt & Adjt
HQ RCASC 3 Cdn Inf Div (CAOF)

Army Form A 47

"G"

Form of Order for assembly of a General or District Court martial

.....Orders by Maj-Gen C. Vokes, CB CBE DSO

GOC 3 Cdn Inf Div CAOF

Bad Zwischenahm, Germany, 18 Apr 46.

The detail of officers as mentioned below will assemble at RCASC Compsite Offrs' Mess, Alexander Airport, Oldenburg at 1000 hours Thurs 25 Apr 46 for the purpose of trying by a general court martial the accused person named in the margin and such other person or persons as may be brought before them.

ACCUSED

L.7098 WO I(RSM) Ryder, G.J. - HQ RCASC 3 Cdn Inf Div CAOF

PRESIDENT

Brig W.J. Megill DSO - 2/9 Cdn Inf Bde CAOF

MEMBERS

Lt-Col D.C. Cameron DSO and Bar ED - 3 SD & G Highrs CAOF

Lt-col E.H. Hodson, DSO - 2/3 Cdn A Tk Regt RCA CAOF

Maj S.L. Dymond - 3 CH of O (MG) CAOF

Maj N.W. Hellander - 2/3 Cdn A Tk Regt RCA CAOF

WAITING MEMBER

Maj P.H. Stephen - 3 Nth NS Highrs

JUDGE ADVOCATE

Maj J.R. Miquelon - 3 Inor 'B' JAG Overseas CADF

is hereby appointed judge advocate.

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to AA&QMG HQ 3 Cdn Inf Div CAOF

Signed this 18th day of April 1946.

"C Vokes"

(C Vokes) Maj-Gen
GOC 3 Cdn Inf Div CAOF

I

Summary of Evidence in the case of L-7038
RSM Ryder C.S. of HQ RCASC (CASF)

The Officer Commanding directs that the evidence be taken on oath:

1st Witness

Miss P.P. Vlaun of 14 Wasterstraat Haiden Holland sworn states:

I am Miss P.P. Vlaun of 14 Wasterstraat Haiden Holland. I was employed as a waitress at the Corner House Club, Arnhem, Holland from 27 June 45 until 10 Oct 45 and while employed I came to know Sgt Major Ryder. I did not keep com ant with Sgt Major Ryder until the end of Dec when we began to go out together regularly. On the 10 of Mar I received a letter from Sgt Maj Ryder stating that he had some things to put away in a safety deposit box and from our previous conversations I gathered that by "things" he meant the watches, rings etc. that he was in possession of. On his arrival on the 15 Mar he told me that he had lost his job on the 9th of March I noticed a article in the newspaper that some jewellery. I went to the Police Station in Haarlem and there I told them that I thought the box mentioned in the newspaper was the property of Sgt Maj Ryder. I was then asked if I could name the contents of the box which I did to the best of my ability, namely watches, rings, shoes, cigarettes. I was then asked to name the owner of the box and I stated that it was Sgt Maj Ryder. The police told me that they had Sgt Maj Ryder's name as the owner of the box and that they still had possession of it, and that they would contact the provost in Amsterdam. When I named the articles in the box I also stated that there were a number of English pounds in the box as Sgt Maj Ryder had told me what the box contained. The next day I went to see the provost in Amsterdam and since then I have been interviewed by the provost at various times. That is all I know.

Cross-examined by the accused:-

Question — Did the provost remove any bonds from your possession ?

Answer — Yes.

Question — Whom ?

Answer — Lt A.E. Brock, 11 Cdn Provost Coy C.A.O.F. from my safety deposit box.

Question — Did you receive a receipt ?

Answer — No.

Question — Who first suggested that you get a safety deposit box ?

Answer — Mr Du Chateau, accountant Amsterdam.

signed P.P. Vlaun

2nd Witness

Inspector van Marion of the Haarlem Civil Police, sworn states:

I am Inspector van Marion of the Haarlem Civil Police, on Friday 15 Mar 46 I received a telephone call at my home, one of my policemen told me that a civilian had found a broken case on De Wittstraat near Hampersingel. In the case were found many things of great worth, the policeman asked me to come to the office so that we could make a list of the contents. We made a list of the contents and held them in my safe. The list consists of: two gold tie pins, two pairs of cufflinks, one golden ear ring, a blue stone, a brooch, three bracelets of coins, a case with a rosary, three boxes cigarettes, two silver spoons, three brooches, seven boxes meat, six cakes of soap, 1 camera in case, 1 toy jeep, cigarette case, four ties, four head necklaces, 1 bread bracelet, 5 wristwatches, four golden woman wrist watches, two golden watches (mens), 2 watch bracelets, 1 ladies gold pencil, eight golden rings, four towels, 1 shirt, one case toilet articles, two silk shawls, ground coffee, tea, and two loaves of bread, 14 English coins, 121 English pounds, 41 American dollars, and one cheque. The box had the inscription George J. Ryder. I received instructions later from the Canadian Provost not to release the case until hearing further from them.

On Tuesday 21 Mar 46 a young lady by the name of Petronella P. Dicen appeared here alone and told me that the case was the property of her fiancee Sgt Maj Ryder. She told me that he had passed through Haarlem on Saturday going to Leiden from Oldenburg and that the case had fallen or was stolen from the car in Haarlem. Ryder did not report the loss to the police as he did not expect it would be found. Miss Dicen told me what she knew about the contents of the case and it was just as we found in the case. Miss Dicen stated she had read in the newspapers that a case from a Canadian had been found therefor she came to Haarlem. After Sunday she returned with a member of the Canadian Provost from Amsterdam. I was not present but I spoke to the Provost on the telephone and the provost requested the case and the contents to take with him. I refused as I had previous instructions from Capt Hoogendyk of a Canadian Unit not to release the case. Later Lt A.E. Brock on the 30 Mar, came with the Capt commander of the Provost and I gave him the case. On the second Apr. Lt W.J. Panagapka of 3 Cdn S.I.S. 3 Cdn Div CAOF came and requested a statement which I gave to him.

Question — Are you positive it was the night of the 15 March ?

Answer — No it is the night of the 16 Mar at 2200 hrs.

signed van Marion

2nd Witness

Simon Meyer, Reitzstraat 44, Haarlem, Holland sworn states:

I am Simon Meyer of Reitzstraat 44, Haarlem, on Saturday 16 Mar 46 about 1030 in the evening I saw a car coming from the direction of Amsterdam going in the direction of Amsterdam going in the direction of the Hague. Just at the corner of Kleine Houtstraat I saw that a box dropped off the car and fell to the ground and I saw different things lying in the street, I went with my wife and took all the things off the street and put them in the box again, but there were so many people around that it is possible that some of these people did put some of the things in their pockets. I saw a boy about 20 years putting something in the pocket of his jacket. My wife put the top on the box and we walked to the police station with the box. I arrived at the police station at about 1048 and when we went in the station I saw a policeman in uniform and we told them the whole story. The policeman opened the box and looked in then they then took a small box out of the larger one and it was full of jewels, they also took a camera and came out. I asked the policeman if I could take the box home but they refused saying they must report it to the C.I.D. The C.I.D. was not in at that moment but they told me to wait. I then asked them for a receipt but they said only the CID could do so. I then returned home promising the policemen to return Sunday, but did not see the CID until Monday morning. I had a talk with Detective Officer Beerman who was very busy. When I handed the box into the police there were various personal articles also some English money which was paper money. I did not recognise whether the car was a army car as it was travelling fairly fast and it was dard.

The accused declines to cross-examine the witness.

Signed S Meyer

This evidence was interpreted under oath by Police Interpreter Haarlem.

(D.R. Gaitens), Capt.

6th Witness Marinus Christraam Seerman, Police investigator, Haarlem, sworn states:

I am Marinus Christiaan Seerman police investigator, Haarlem, on Saturday evening 16 Mar 46 at ap. 20h 2030 hrs I came to the police station, the two acts who were in charge, Spoelstra and Hurkmel, told me that a person called Meyer had found a box with jewels etc in it. They had made a list of the contents which I checked and found correct. The list consisted of various pieces of jewellry, 121 English pounds, 41 American dollars and personal items. I called Inspector Van Marion and asked him to the station, when he arrived I handed the articles and the list to him. He checked them and finding everything in order deposited the valuables in the safe. I made investigations to see if I could find the young man who was seen holding something but could not discover him. I then made my report, that is all I know.

The accused declines to cross-examine the witness.

signed M.C. Seerman

This evidence was interpreted under oath by police Interpreter Haarlem.

(D.H. Gaitens), Capt.

5th Witness — Lieut W.J. Panagapko of No 3 Cdn SIS CAOF, sworn states:-

I am lieut W.J. Panagapko of No 3 Cdn SIS CAOF. On 25 Mar 46 I received information to the effect that a suitcase belonging to the accused had been seen as it fell out of a truck in Haarlem Holland. As the case hit the cobbled street it burst open scattering part of the contents. Acting on instructions received from the APM 3 Cdn Div, I proceeded to CRASC HQ Oldenburg, interviewed the accused and obtained a voluntary statement, which is now in my possession. In this statement, the accused made no mention of being in possession of jewelry and money at the time of his journey to Holland. Conswquently I interviewed him again on the 28 Mar 46 and after stating that I already knew the contents of the suitcase the accused gave me a second statement. This is also in my possession. I then questioned the accused as to how he came to be in possession of such a lot of jewelry and foreign currency and he stated he had won it all gambling. I then proceeded to Holland where I interviewed Miss E.P. Vigen an acquaintance of accused and Inspector Van Marion, Inspector of Dutch Police Haarlem, meanwhile the APM 3 Cdn Div went down to Holland and procured all jewelry and money pertaining to this case and handed it over to me. Upon my return from Holland I reveiwed all evidence and statements in my possession and submitted a complete report to HQ 3 Cdn Div. I would like to state here that the accused was placed under close arrest on the 25 Mar 46 and released to open arrest on the 28 Mar 46 by me. He has been under open arrest since that day. I now hand over to you original first and second statements made by the accused and taken down by me on the 25 and 28 of Mar. All foreign currency pertaining to this case is being held in safe custody by me.

Question — On the afternoon of the first interview did I not admit on being questioned that there were jewerlry and money in the suitcase.

Answer — It was not until after the statement was finished and I began to question you that you admitted it.

signed Lieut W.J. Panagapko

The statements referred to in the evidence of the above witness attached hereto as Exhibit "A" & "B".

6th Witness — Lieutenant A.E. Brock of 2/4 Cdn Provost Coy CAOF duly sworn states:-

I am Lieut A.E. Brock of 2/4 Cdn Provost Coy CAOF On or about the 27 Mar 46, whilst employed as an investigator in 11 Provost Coy CAOF, I was detailed by my O.C. to proceed to the civil police station, Haarlem with instructions to pick up money and valuables which were being held by the Dutch civilian police. This money consisted of approximately 120 English pounds and approximately 42 American dollars. Valuables were assorted watches, rings etc. The civilian police also handed over to me a black wooden box bearing the name George J. Ryder. I turned all these articles over to Capt L.G. Magee, O.C., 11 Cdn Provost Coy, from whom I obtained a receipt, which is now in my possession.

signed A.E. Brock Lieut

The accused declines to cross-examine the witness.

7th Witness

Capt J.M. Malcolm, M.B.E. of HQ., RCASC, (CAOF), sworn, States;

I am Capt J.M. Malcolm adjutant of HQ RCASC 3 Cdn Inf Div CAOF. I hereby produce Daily Part I Order No 359 Para 6 dated 12 Feb 46 issued by Lt Col W.H. Colling C,RCASC 3 Cdn Inf Div CAOF and signed on his behalf by Capt J.F.H. Clare on the above mentioned date. I further state that by Part II order No 3 dated 9 Feb 46 RSM Ryder was TOS this HQ 4 Jan 46, arrived at this HQ 5 Jan 46 and resumed duties of RSM 6 Jan 46 and has been so employed up until the present time. Daily orders are posted in the main Admin building second floor on the notice board which must be passed by any person residing on this floor. RSM Ryder has been billetted on this floor since his arrival.

The accused declines to cross-examine the witness

John M. Malcolm

The above mentioned document read out to the accused by me, marked Exhibit "C" and attached hereto.

The accused was cautioned as follows;

QUESTION

Do you wish to make any statement or give evidence on oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

ANSWER

I do not wish to make a statement.

The accused does not call any witnesses

signed Geo J. Ryder

I certify that the foregoing Summary of Evidence consisting of ~~Five~~ (5) pages was taken by me in the presence of the accused and that R.F. 4 (c) (d) (e) (f) have been complied with.

(D.R. Gaitens), Capt
2/3 Cdn Inf Div Tps Coy
RCASC (CAOF)

STATEMENT OF L-7098 R.S.M. RYDER, G.J.

I have been warned that I am not obliged to say anything unless I wish to do so, but anything I do say will be taken down in writting and may be used as evidence.

signed RSM Ryder, G.M.

On the 16th of March 1946 at appx 1310 hrs I left CRASC HQs to go to LEYDEN, Holland. I was a passenger in a 60 cwt lorry with RCASC colours and markings. An RCASC corporal, whom I can recognize, was driving the truck. The purpose of his trip was to take food supplies to the Colonial Institute in Amsterdam and I went along as I was on a week-end pass.

We left the Airport at Oldenburg and proceeded down routes 69 and 200 going through LINGEN, HENGELO, DEVENTER, APELDOORN, AMERSFOORT and AMSTERDAM. We stopped at APELDOORN and had a cup of coffee and arrived in Amsterdam at appx 2130 hrs.

I helped the driver to unload his vehicle and then the driver took me from AMSTERDAM to LEYDEN going through HAARLEM. We arrived in LEYDEN appx 2330 hrs. I then went ot the house of Miss P.P. Vicen at 14 Lysterstraat, LYDEN. I stayed there that night and all day and night of the 17th of March and left appx 1200 hrs on the 18th to come back to OLDENBURG.

When the driver of the truck dropped me off on the night of the 16th I did not see him anymore until he called for me on the 18th.

On our way back we stopped at the Colonial Institute, AMSTERDAM and picked up two barrels of Brandy for delivery to Recreational Increment, OLDENBURG. We then picked up a soldier who wanted a lift and left AMSTERDAM appx 1330 hrs.

We came back along the same route that we went up on and arrived at OLDENBURG about 2200 hrs where I reported into the Sgt's mess at CRASC HQs

WITNESS: W.J. Panagapko
Lt W.J. Panagapko
No 3 Cdn S.I.S.

signed
L-7098 RSM Ryder, G.J.

Exhibit "A"

Geo J. Ryder

D.R. Gaitens Capt

SECOND STATEMENT OF L-7098 R.S.M. RYDER, G.J.

I have been warned that I am not obliged to say anything unless I wish to do so, but anything I do say will be taken down in writing and may be used as evidence.

signed..Geo.J..Ryder.
L-7098 R.S.M. Ryder, G.J.

On my trip to LEYDEN, Holland on the 16th of March, 1946 I was in possession of a black wooden suitcase, with my name painted on it. ~~This case contained the following:~~ one dressing gown (grey with blue trimmings), one pair of brown oxfords, on complete battledress, one clean change of clothing, holdall, one teakwood cigarette case with silver pencil inside, one small purse with some Roman Catholic medallions, rosary, silver cruisafix and two rings; one Kodak camera, one bottle of Scotch Whisky, one bottle of Cognac, about 150 Tarten and Legion cigarettes, some Chocolate bars and gum, some toilet soap, two or three towels.

The case also contained a box of jewellery consisting of; two gold pocket watches, taree mens wrist watches, one tie pin with a rubie, two sets of ear rings, one diamond studded ladies wrist watch, two other ladies wrist watches, about eight assorted rings,a ladies gold pencil, one solitary stone, one single earring, two silver spoons, one gold colar pin, several ornamental pins, four assorted necklaces, one bracelet made of amber coloured stones, appx 126 English One-pound notes, four American ten-dollar bills, one American one dollar bill, and some English silver money.

The wooden suti-case also contained my rations for 48 hrs and two white silk scarfes.

All the jewellery and money mentioned in the above statement had been procured by me during my trips overseas since I left England I got most of it through gambling on my travels through Sicily, Italy, France, Belgium and Holland.

I was taking the jewellery and the money to give to Miss Vloen, 14 LYSTERSTRAAT, LEYDEN, as on my previous trip I had already promised to turn these articles over to her for her sole benifit in order that she would have enough money to emmigrate to U.S.A. or CANADA after things were a bit more settled.

WITNESS: signed
Lt. W.J. Panagapko,
No 3 Cdn S.I.S.

Signed Geo J. Ryder

Exhibit "B"

signed Geo J. Ryder

signed D.R. Gaitens, Capt

EXTRACT FROM

DAILY PART I ORDERS

Issued By

LT-COL W.H. COLLING

COMMANDER RCASC 3 CDN INF DIV CACF

Last Order No 358 d/11 Feb 46 This Order No 359 d/12 Feb 46

6. CURRENCY EXCHANGES

1. All personnel when posted to Germany must not, repeat MUST NOT, retain other currencies. Overseas RO (BAOR) No 1149 states persons subject to Military law may have in his possession in Germany no currency other than Marks. Exchanges of Currency will be made at the [illegible] 3 Cdn Inf Div (CACF) Pay Office in the main Adm Bldg.

(To be repeated in Unit Part I Orders)

signed J.F. H Clare

for (W.H. Colling) Lt-Col
C, RCASC
3 Cdn Inf Div CACF

Exhibit "C"

signed Geo J. Ryder

D.R. Gaitens Capt

Lists of Exhibits for the prosecution in the case of L-7098 RSM Ryder, G.J. HQ RCASC 3 CID (CACF)

Exhibit "A" Original Statement of the accused.

Exhibit "B" Second Statement of the accused.

Exhibit "C" Part I Order HQ RCASC 3 CID (CACF) No 359 d/12 Feb '46

Certified True Copy

EXTRACT COPY

CANADIAN ROUTINE ORDERS (Nos.1143 - 1168)

1149 - CURRENCY IN GERMANY

1. Attention is directed to Cdn RO (21 A Gp) No.651.

2. Subject to the exceptions set out in para 3 hereof, no person subject to military law may have in his possession in GERMANY any currencies other than marks; this applies to public, PRI/regimental, as well as private funds.

3. (a) Except where prevented by operational or administrative reasons, exchanges of currency (other than in advance account balances) on entering GERMANY will be carried out as bulk transactions before crossing the frontier. Exchanges of currency on leaving GERMANY will be carried after crossing the frontier.

(b) Persons subject to military law who make short visits to GERMANY (e.g. staff officers, convoy dvrs, personnel of units stationed near the frontier), may take with them currencies other than marks to the value of four days pay or in the case of voluntary workers, the equivalent of three pounds. Such currencies will be exchanged in the normal way if any such visit exceeds ten days.

4. Advance account balances will not be exchanged but will be paid into Field Cashiers.

5. Currencies other than marks will NOT either be paid out to the troops or tendered in payment for goods or services or labour in GERMANY or exchange for marks except through official channels.

6. Cdn RO (21 A Gp) No.1101 is hereby cancelled

(21 A Gp GRO 1129/45 adapted) (525/Gen/1-PMGT)

"H.C. Pattison" Major

HQ RCASC 3 Cdn Inf Div CAOF

23 Apr 46.

CHARACTER REFERENCE

I have been acquainted with the accused, REM HYDER, since Apr 1941. During this time he has served under my command as a Sgt (47 Cdn GT Coy); WO II (CSM 41 GT Coy) and WO I (RSM HQ - RCASC 3 Cdn Inf Div CASF).

RSM HYDER has always performed his duties in a most energetic and efficient manner.

I have always found him to be completely honest and his character beyond reproach.

"J"

"RJM"

"W.R. Colling"

(W.R. Colling)Lt-col
C, RASC
3 Cdn Inf Div CASF

Field
17 Apr 46

L-7098 WO I(RCR) MYLAR, G.J. HQ RCASC 3 CDN INF DIV CASE

NIL

nil nil 51 yrs 6 mos

5 Sep 39

6 yrs 7 mos

NIL

16 April 46 "JR Malcolm" Capt

Officer having custody of regimental books.

M.F.M. 6
(A.F. B.197)
40/P & S/136 (2068)

No. L-7098 Name RYDER, GJ | Sqn., Battery, or Company | Corps RE&SC | Date of enlistment | G.C. Badges | Service on Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. WH Colling Major | Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Previous Sheet destroyed on confirmation in rank of Sgt AUTH: R.O. 319					
				Awarded the Gen Volunteer Service Medal and Clasp wef 10 Jan 44			J.B.		
				CERTIFIED TRUE COPY					
				"J. Malcolm" Capt					
				(J.M. Malcolm)					
				Offr having custody of original					

(F.T.O.)

RECORDED AT CMHQ IN AB 160 [illegible] C A O F - G C M - 1 - 6

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General ~~and District~~ Courts-Martial

Proceedings of a General Court-Martial held at [illegible] Germany, on the 25th day of April 19 46 by order of [illegible] Commanding 3 Cdn Inf Div CAOF dated the 18th day of April 19 46

President.

Brigadier W.J. Megill, DSO - 2/3 Cdn Inf Bde CAOF

Members.

Lt-Col D.C. Cameron, DSO and Bar, ED - 3 DD & G Highrs CAOF

Lt-Col R.E. Hodson, DSO - 2/3 Cdn A Tk Regt RCA CAOF

Maj S.L. Dymond - 3 CH of O (HQ) CAOF

Maj K.W. Reilander - 2/3 Cdn A Tk Regt RCA CAOF

Major J.R. Miquelon, 3 Incr 'B' (CAOF) Cdn JAG Overseas, Judge Advocate.

Trial of* 1.7098 WO I (RSM) George John Ryder, HQ RCASC CAOF

The order convening the Court, the charge-sheet and the summary ~~(or abstract)~~ of evidence are laid before the Court.

~~The Court satisfy themselves that is not available to serve owing to~~

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Capt D.R. Gaitens, 2/3 Cdn Inf Div Tps Coy RCASC CAOF

~~Counsel~~ or defending officer† Major T.G. Watt RCASC

At 1000 o'clock the Trial commences.

The order convening the Court is read, and is marked 'C' signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No Sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Mil. Form B. 271
10M—8-41 (1319)
H.Q. 1772-89-224

PROCEEDINGS REVIEWED
20 May 46
REVIEWING OFFICER, JAG BRANCH CMHQ

RECEIVED MAY 20 1946 JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED
Date 11 MAY 1946
D.A.A.G. HQ 3 Cdn Inf Div (CAOF)
Major,

MEDICAL CERTIFICATE

Ref.

Court Exh "F"
P. 7.

2 filed

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.
Capt R.M. McLeod, 1 Det (A) Cdn JAG Overseas

Q. to accused: Do you object to F.2010 WO II(SE) Crone, WJ, 3 Indep Bty (CAOF) Cdn JAG Overseas acting as shorthand writer?

Answer: No sir.

The shorthand writer is duly sworn.

Charge-Sheet

Instruction. If the accused has elected to be tried under Army Act, sec. 20 (8) the fact should be here recorded.

The charge sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty sir. *Answer.*

~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Question.*

Answer.

The accused having pleaded Guilty to the first charge, the provisions of Rule of Procedure 35 (B) are here complied with.
Second charge withdrawn in accordance with provisions of RP 35(c).

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

C H A R G E S H E E T

The accused, L.7098 Warrant Officer Class 1, (Regimental Sergeant-Major) George John RYDER, Headquarters RCASC (CAOF), a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 11
Army Act

WHEN ON ACTIVE SERVICE NEGLECTING TO OBEY CANADIAN ARMY ROUTINE ORDERS (21 ARMY GROUP)

in that he

on 16 Mar 46 W/C

in the Field, in Germany, when proceeding from Germany to Holland, had in his possession one hundred and twenty-one (121) Pounds in English currency and forty-one (41) Dollars in American Currency contrary to Canadian Routine Order (21 Army Group) 1149, as republished in Unit Part 1 Orders No. 359 dated 12 Feb 46.

SECOND CHARGE
(Alternative)
Sec 40
Army Act

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

on 16 Mar 46 W/C

in the Field, in Germany, when proceeding from Germany to Holland, was improperly in possession of one hundred and twenty-one (121) Pounds in English Currency and forty-one (41) dollars in American Currency.

W. H. Colling

(W. H. Colling) Lt-col
Comd RCASC
3 Can Inf Div (CAOF)

In the Field
16 Apr 46

To be tried by General Court-Martial.

(D. Vokes) Maj-Gen
GOC 3 Can Inf Div CAOF

In the Field
18 Apr 46

B2

MEDICAL OFFICER'S CERTIFICATE

I certify that No L7098 RSM(WOI) G.J.Ryder, HQ RCASC 3 Cdn Inf Div RCASC

fit to undergo trial by Court-Martial.

Oldenburg,
25 Apr 46

(Insert "fit" or "unfit.")

J. Harper Capt

Signature of the Medical Officer.

CC

Proceedings on Plea of Guilty

*To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused 1.7098 NO 1 (NSW) George John Ryder, HQ NSAGC CAOF is found guilty of the first charge.

*The summary (~~or abstract~~) of evidence is read, marked 'A' signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. No sir.

~~The accused in mitigation of punishment says:—~~

~~[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]~~

Instruction.

* If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Do you wish to give evidence yourself or to call any witnesses as to character? *Question to the accused.*

Def Offr: There are no actual witnesses as to character sir, but I would like to submit to the Court a written statement made by Lieutenant-Colonel Colling, who is at present absent in the UK. *Answer.* *Evidence as to character.*

The statement referred to by the Defending Officer is submitted to the Court, read by the President, marked 'J', initialled by the President and annexed to the proceedings.

PROCEEDINGS ON CONVICTION BEFORE GARRISON

Question by the President: Have you any evidence to produce as to the character and particulars of service of the accused?

Answer by the Prosecutor: Yes sir, AF B296 and certified true copy of MF 88.

The Prosecutor produces Statement as to Character and Particulars of Service and certified true copy of Conduct Sheet, purporting to refer to the accused, which he submits to the Defending Officer for examination and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (a) they purport to be signed by the officers required by Rules (1)(c)(ii), and (ii) they purport to refer to a soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked 'K' and 'L' respectively.

Question by the President: Do you wish to address the Court in mitigation of punishment?

Answer by the Defending Officer: Yes sir. Sergeant-Major Ryder has a record of service that can be looked back on with pride. He served with the Canadian Army for three and a half years in World War I, attaining the rank of Corporal and in 1918, he won the Military Medal. In this present emergency he joined the Army on the fifth of September 1939, was made a Sergeant the same day and won his appointment as R.S.M. in Italy in December 1944. Early in 1945 he was mentioned in dispatches.

Sergeant-Major Ryder was sent to C.A.O.F. in January 1945 at the special request of Lieutenant-Colonel Colling.

The charge against Sergeant-Major Ryder is one of disobeying an Army Order which in turn is based on a Foreign Exchange Regulation of the United Kingdom. This Foreign Exchange Regulation controls the flow of Sterling Currency out of the United Kingdom.

The Army Order forbidding the retention of Sterling Currency has been well publicized and repeated but the reason why there should be such an order has not been made known to the troops. The average officer doesn't really know or care why this order is in effect. Sergeant-Major Ryder was a butcher in civilian life and, although he is an intelligent man, he is not versed in International Finance. The current money credit or deficit of the United Kingdom in any given foreign country is of no interest to him.

Sergeant-Major Ryder enjoys playing cards and during his service on the continent has won a considerable amount of money. The losers sometimes paid off their debts in Pound Notes or Dollars. It is the feeling of the average person that dollars or pounds Sterling represent real tangible money as opposed to the paper money of any of the countries through which the Canadian Army has fought and so the average person wants to keep that real money.

Sergeant-Major Ryder was taking the currency to Holland to leave it in safe-keeping with the young lady. His plans for civilian life are to take his discharge in Canada, spend a month or six weeks there in order to settle some business affairs and then to return to Germany to take up a post with the Control Commission. The young lady with whom the money was to be left wants to emigrate to America. She does not expect to be able to

go before next winter and the thought was that this money in question would finance a nice leave together in England before Sergeant-Major Ryder assumes his duties with the Control Commission.

The Summary of Evidence in this case contains no evidence or suggestion that Sergeant-Major Ryder had any black-market dealings or that he contemplated selling the Sterling or American currency to European Nationals at a premium. The offence is that having acquired the currency on the continent and not having the privilege of depositing the money in his pay account, he wanted to take the money to the UK where he could legally enjoy the benefits of it.

The defence respectfully suggests to the Court that in attempting to do this Sergeant-Major Ryder did contravene the letter of the law but did not contravene the spirit of the law. Should the sentence in this case be a severe one, it will jeopardise the position of the accused with the Control Commission of Germany and so have an effect on the future earning power of Sergeant-Major Ryder.

President: The Court is now closed to consider the sentence and the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.

E

Finding

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused is guilty of the first charge.

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

is duly sworn.

Evidence of character, &c.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked , signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.*

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*

Cross-examined by the accused.

(Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Question to the accused.

Do you wish to address the Court? *Answer.*

The Court is closed for the consideration of the sentence.

14

F

Sentence

The Court sentence the accused 47098 Warrant Officer Cl I (Regimental Sergeant Major) George Johan Lyder Headquarters 1 CASC (~~RAOF~~) to be reduced to the rank of Warrant Officer Cl. II and to be severely reprimanded.

J. Kufiquelon Major
Judge Advocate
15 Apr 46

W Jurgetting
President

I confirm the finding and the sentence of the Court.

In the Field
30 Apr 46

(~~Vokes~~) Maj-Gen
GOC 3 Cdn Inf Div CAOF

Promulgated and extracts taken

In the Field
1 May 46

J Walcolm Capt & Adj.
H.Q. ~~1 C.A.S.C.~~ 3 Cdn. Inf. Div. (CAOF)

Army Form A 47 Ref-G 15

COURTS-MARTIAL

Form of Order for the assembly of a General or District Court Martial

.....Orders By Maj-Gen G. Vokes CB CBE DSO
GOC 3 Cdn Inf Div CAOF
Bad Zwischenahn, Germany, 18 Apr 46

The detail of officers as mentioned below will assemble at RCASC Composite Units Mess, Alexander Airport, Oldenburg at 1000 hrs Thurs 25 Apr 46 for the purpose of trying by a general court-martial the accused person named in the margin and such other person or persons as may be brought before them.

ACCUSED
L-7098 WO I (RSM) RYDER, G.J. - HQ RCASC 3 Cdn Inf Div CAOF

PRESIDENT

Brig W J MEGILL DSO - 2/9 Cdn Inf Bde CAOF

MEMBERS

Lt-col D C CAMERON DSO and Bar ED - 3 SD & G Highrs CAOF
Lt-col E M HODSON DSO - 2/3 Cdn A Tk Regt RCA CAOF
Maj S L DYMOND - 3 CH of O (MG) CAOF
Maj N W REILANDER - 2/3 Cdn A Tk Regt RCA CAOF

WAITING MEMBER

Maj P H STEPHEN - 3 Nth NS Highrs

JUDGE ADVOCATE

Maj J R MIQUELON - 3 Inf "B" JAG Overseas CAOF

is hereby appointed judge-advocate.

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to AA&QMG HQ 3 Cdn Inf Div CAOF.

Signed this 18th day of April 1946.

(G. Vokes) Maj-Gen
GOC 3 Cdn Inf Div CAOF

18 JRut

LIST OF WITNESSES

TRIAL OF 1-7098 NO 1 (RZE) RYDER J A - HQ, HQASU 3 Cdn Inf Div CAOF

1st	Mir. P.P. VIOEN	- 14 Hysterstraat, Heiden, Holland
2nd	Inspector VAN MARION	- Haarlem Civil Police
3rd	~~Simon Muyen~~	- ~~Reitzstraat, 44 Haarlem~~
4th	Marius Christraan BEERLD	- Police Investigator, Haarlem
5th	Lieut W.J. PANAGAPKO	- 3 Cdn Inf Div SIB CAOF
6th	Lieut A.S. BROOK	- 2/4 Cdn Fro Coy CAOF
7th	Capt J.M. MALJOLM RMP	- HQ, HQASU 3 Cdn Inf Div CAOF

JRut

Summary of Evidence in Ch/Ref
of 7098 R.S.M. Ryder D.J. of H.Q. R.CASC
(CAOF).

The officer commanding directs
that the evidence be taken on oath.

1st Witness "H" Miss P.P. Vroen of 14 Lysterstraat Leiden Holland sworn states.

I am Miss P.P. Vroen of 14 Lysterstraat Leiden Holland, I was employed as a waitress at the Corner House Club Oppledoorn Holland from 27 June 40 until 10 Oct 40 and while employed I came to know R.S.M. Ryder. I did not keep company with Sgt Major Ryder until the end of Dec when we began to go out together regularly. On the 10 of Mar I received a letter from Sgt Maj Ryder stating that he had some things to put away in a safety deposit box and from our previous conversations I gathered that by "things" he meant the watches rings etc that he was in possession of, but on his arrival on the 16 Mar he told me that he had

cont on page 2

1st witness : continue

load his box on the way down from Germany. On the 18 or 19 of March I noticed a piece in the newspaper about some jewellery. I went to the Police Station in Haarlem and there I ~~[illegible]~~ told them that I thought the box mentioned in the newspaper was the property of Sgt. May Ryder. I was then asked if I could name the contents of the box which I did to the best of my ability, naming [watches, rings, shoes, cigarettes] I was then asked to name the owner of the box and I stated that it was Sgt May Ryder. The police told me that they had Sgt May Ryders name as the owner of the box and that they still had possession of it, and that they would contact the provost in Amsterdam. When I named the articles in the box I also stated that there were a number of English pounds in the box.

CONT ON PAGE B

1st Witness continues as Sgt Maj. Ryder had told me what the box contained. The next day I went to see the provost in Amsterdam and since then I have been interviewed by the provost at various times. That is all I know.

Cross examined by the accused

Question - Did the provost remove any bonds from your possession.

Answer - Yes

Question - Whom

Answer - Lt. E. Brock, 11 Can Provost Coy C.A.O.C. from my safety deposit box.

Question - Did you receive a receipt

Answer - No.

Question - Who first suggested that you get a safety deposit

Answer - Capt Mr. Van Chateau, ~~chief~~ accountant Amsterdam

~~Question~~ -

H Vos.

2nd Witness

Inspector Hgn Marion, of the Haarlem Civil Police sworn states.

I am Inspector Hgn Marion of the Haarlem Civil Police, on Friday 15 Mar 4/c I received a telephone call at my home, one of my police men told me that a civilian had found a taken case ~~in~~ De Ruyterstraat near Kamperenget. In the case were found many things of great worth, the policeman asked me to come to the office so that we could make a list of the contents. We made a list of the contents and held them in my safe. The list consists of [illegible] two gold tie pins, two pairs of ear rings, one golden ear ring, a blue stone, a brooch, three bracelets of coins, a case and a rosary, three boxes cigarettes, two silver spoons, three brooches seven boxes meat, six cakes of soap, 1 camera in case, 1 toy jeep, 1 cigarette case, four ties 4 bead necklaces, 1 bead bracelet, 3 wristwatches, four golden

2nd witness continues

women's wrist watches, 2 gold watches (mens), 2 watch bracelets, 1 ladies gold pencil, 8 golden rings, four towels, 1 shirt, one case toilet articles, two silk shawls, ground coffee, tea, and 1 two loaves of bread, 146 [illegible] 121 English pounds, 41 American dollars, and one cheque. The bag had the inscription George J Ryder. I received instructions later from the Canadian Provost not to release the case until hearing further from them.

On Tuesday 21 Mar 46 a young lady by the name of Petronella P. Droen appeared here [redacted] alone and told me that the case was the property of her fiance Sgt Maj Ryder. She told me that he had passed through Haarlem on Saturday going to Heidenfeld Oldenburg and that the case had fallen or was stolen from the car in Haarlem. Ryder did not report the loss to the police as he did not expect it would

2nd Lt Thiessen continues

5 6

to found. Miss Vloon told me what she knew about the contents of the case and it was just as we found it in the case. Miss Vloon told us she had read in the newspapers that a case from a Canadian had been found there for she came to Haarlem. After Sunday she returned with a member of the Canadian Provost from Amsterdam I was not present but I spoke to the Provost on the telephone and the provost requested the case and the contents to take with him. I refused as I had previous instructions from Capt Hoogendyk of the ~~Canadian Company~~ Canadian Provost not to release the case. Later Lt a.D. Brock on the 30 Mar, came with the Capt commander of the Provost and I gave him the case. On the 2 Apr Lt W.J. Panagapka of 3 Cdn S.D.S. 3 Cdn Div C.A. Cmd requested a statement which I gave him.

7

2nd Witness
Continues

Question Are you positive it was the night of the 15 Mar

Answer - No it is the night of the 11 Mar at 2230 hrs.

3rd Witness

Simon Meijer, Rutzstraat 44, Haarlem, Holland sworn states

I am Simon Meijer of Rutzstraat 44, Haarlem, on Saturday 16 Mar 46 about 1030 in the evening I saw a car coming from the direction of Amsterdam going in the direction of the Hague. Just at the corner of Kleine Houtstraat I saw that a box dropped off the car and fell to the ground and I saw different things lying in the street, I went with my wife and took all the things off the street and put them in the box again but there were so many people around that it is possible that some of the people did put some of the things in their pockets. I saw a boy about 20 years putting something in the pocket of his jacket. My wife put the top on the box and we walked to the police station with the box. I arrived at the police at about 1045 and when

CONT ON PAGE 2

3rd interview
Continued

[illegible] I saw a policeman on the
[illegible] and stopped and told
him the whole story. The
policeman opened the box
and looked in. They then
took a small box out of
the large one [illegible] and it also
[illegible] of jewels. [illegible] They also
took a camera and [illegible]
I asked the policeman if I
could take the box [illegible]
but they refused saying
they must report it to the
C.I.D. The C.I.D was not in
at that moment but they
told me to wait. I then
asked the policeman for a
receipt but they said only
the C.I.D could do so. I then
returned home promising the
policeman to return Sunday.
But I did not see the C.I.D
until Monday morning. I had
a talk with Detective officer
Brennan who was very busy.
When I handed the box into the
police there were various person
al articles and also some Eng
lish money which was paper
money. I did not recognise
whether the car was a army
car as it was travelling fairly

CONTINUED

3rd witness — cont'd — 35

The accused declines to cross examine the witness

J. Meijer

This evidence was interpreted under oath by Police Interpreter Haarlem.

D.R. Saitens Capt

4th Witness

Marinus Christiaan Berman, police investigator, Haarlem, sworn states:

I am Marinus Christiaan Berman police investigator Haarlem, on Saturday evening 16 March 46 at appr. 2300 hrs I came to the police station, the two Sgts who were in charge, Spoelstra and Hummel, told me ~~that~~ a person called Meijer had found a bot with jewels etc in it. They had made a list of the contents which I checked and found correct. The list consisted of [various pieces of jewellry] 121 English pounds, 41 American dollars and personal items. I called Inspector Van Marion and asked him to come to the station, when he arrived I handed the articles and the list to him. He checked them and finding everything in order deposited the valuables in the safe. I made investigations to see if I could find the young man who was seen taking something but could not discover him.

CONT PAGE 2

4th witness CONTINUED

Police made [illegible] report, [illegible]
stated as all I know.

The accused declines to cross examine the witness

This evidence was interpreted under oath by Police Interpreter Haarlem

D. A. Haarlem Capt

5th Witness

13

Lieut W.J. Panagapko of No 3 Can Pl 528 Coy of sworn states:-

I am Lieut W.J. Panagapko of No 3 Can Pl 528 Coy. On 25 Mar 46 I received information to the effect that a suitcase belonging to the accused had been seen to fall out of a truck in Haarlem Holland, as the case hit the cobbled street it burst open scattering part of the contents, acting on instructions received from the A Pm 3 Can Div, I proceeded to Base HQ Oldenburg, interviewed the accused and obtained a voluntary statement, which is now in my possession. In this statement the accused made no mention of being in possession of jewelry & money at the time of his journey to Holland. Consequently I interviewed him again on the 28 Mar 46 and after stating that I already knew the contents of the suitcase the accused gave me a second statement this also is in my possession. I then

CONT ON PAGE 14

5 witness continues

questioned [illegible] accused [illegible]
to him. He came to [illegible]
in possession of [illegible] a
lot of jewelry & foreign curren-
cy and he stated he had
won it all gambling. I
then proceeded to Holland
where I interviewed Mr
P.P. Visser acquaintance of
accused and Inspector Han
[illegible], Inspector of Dutch
Police Haarlem, meanwhile
the APM 3 Cdn Div went down
to Holland procured all jewel
ry and money pertaining to
this case and handed [illegible]
to me upon my return
from Holland. I then had all
evidence and statements in
my possession and sub-
mitted a complete report
to HQ 3 Cdn Div. I would
like to state here that
the accused was placed un
der close arrest on the
25 Mar 46 and released to
open arrest on the 26 March
by me. He has been under
open arrest since that day.

Continued on
Page 3

3. 15. 45

5 Witness continues

I [redacted] hand over [illegible] Kell original first and second statements made by the accused and taken down by me on the 20 and 28 of May all to the foreign currency [illegible] safe custody pass is being held

Continued on by me.

Page 4

5 Witness Contains

Q. [illegible] 16 [illegible] 17
[illegible] first [illegible] and B not [illegible]
[illegible] admit on being questioned
[illegible] that I have [illegible] jewelry and
[illegible] money in the [illegible]

Ans. I [illegible] not until after the
statement [illegible] was finished
and I began to question
him that you admitted
[illegible]

W. J. Pang

The statements referred to in the evidence of the above witness is attached hereto as Exhibit A + B.

6 Witness Lieut A.C. Brock R.N. of 3/4 Edn Provost Coy C.A.O.F. duly sworn states as follows.

I am Lieut A.C. Brock R.N. of 3/4 Edn Provost Coy C.A.O.F. and on about the 21 March/16 whilst employed as an investigator in 11 Edn Provost Coy C.A.O.F. I was detailed by my O.C. to proceed to the civil police station to the district known as Hamlin, Pretoria to pick up money and valuables which were being held by the Dutch civilian police this money consisted of approx 120 English pounds and approx 42 American dollars valuables were assorted watches rings etc. The civilian police also handed over to me a black wooden box bearing the name George D. Ryder I returned all these articles over to Capt L.A. Magee O.C. 11 Edn Provost Coy, from whom I obtained a receipt which is now in my possession.

The accused declines to cross-examine the witness.

A.C. Brock Lieut.

7 Witness

Capt J. M. Malcolm Inf. R.C.
of H.Q. R.C.A.S.C. Can. F. sworn
states

I am Capt J. M. Malcolm
adjutant of H.Q. R.C.A.S.C.
3 Cdn Inf Div C.A.O.F. I
hereby produce Daily
Part 1 Order No 359 Para 6
dated 13 Feb 46 issued
by Lt Col W. H. Colling
Crane 3 Cdn Inf Div Can F
and signed on his be-
half by Capt J. F. H. Clare
on the above mentioned
date. I further state that
by Part 2 order No 3 dated
9 Feb 46 R S M Ryder was
Tos this H.Q. 4 Jan 46 ar-
rived at this H.Q. 5 Jan
46 and resumed duties
of R S M 6 Jan 46 and has
been so employed up
until the present time.
Daily orders are posted
in the main Admin
building second floor on
the notice board which
must be past by any
person residing on this floor

Cont on page 2

7 Witness Continues H. S. M. Ryder 19 Cor. been bit-
letted on this Cor 83
since his arrival 1914

The accused declines to cross-
examine the witness

John M Malcolm

The above mentioned document
read out to the accused by
me marked Exhibit "C" and attached
hereto

4

The accused was cautioned as follows

Q. Do you wish to make any statement or give evidence on oath you are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A I do not wish to make a ~~statement~~.

The accused does not call any witnesses

Lieut Royal

I certify that the foregoing Summary of Evidence consisting of 20 pages was taken by me in the presence of the accused and that R.P.A. (C) (D) (E) (F) have been complied with.

D.R. Watkins Capt.

STATEMENT OF L-7098 R.S.M. RYDER, G.J.

I have been warned that I am not obliged to say anything unless I wish to do so, but anything I do say will be taken down in writing and may be used as evidence

G.J. Ryder
.....
L-7098 RSM Ryder, G.J.

On the 16th of March 1946 at appx 1310 hrs I left CRASC H.Q.s to go to LEYDEN, Holland. I was a passenger in a 60 cwt lorry with ROASC colours and markings. An ROASC corporal, whom I can recognize, was driving the truck. The purpose of his trip was to take food supplies to the Colonial Institute in Amsterdam and I went along as I was on a week-end pass.

We left the Airport at Oldenburg and proceeded down routes 69 and 200 going through LINGEN, HENGELO, DEVENTER, APELDOORN, AMERSFOORT and AMSTERDAM. We stopped at APELDOORN and had a cup of coffee and arrived in Amsterdam at appx 2130 hrs.

I helped the driver to unload his vehicle and then the driver took me from AMSTERDAM to LEIDEN LEYDEN going through HAARLEM. We arrived in LEYDEN appx 2330 hrs. I then went to the house of Miss N.P. Visen at 14 Lysterstraat, LYDEN. I stayed there that night and all day and night of the 17th of March and left appx 1200 hrs on the 18th to come back to OLDENBURG.

When the driver of the truck dropped me off on the night of the 16th I did not see him anymore until he called for me on the 18th.

On our way back we stopped at the Colonial Institute, AMSTERDAM and picked up two barrels of Brandy for delivery to Recreational Increment, OLDENBURG. We then picked up a soldier who wanted a lift and left AMSTERDAM appx 1330 hrs.

We came back along the same route that we went up on and arrived at OLDENBURG about 2200 hrs where I reported into the Sgt's mess at CRASC H.Q.s.

WITNESS: W Panagapko
.....
Lt. W.J. Panagapko
No. 3 Cdn S.I.S.

G.J. Ryder
.....
L-7098 RSM Ryder, G.J.

Exhibit A

G.J. Ryder

D.L. Hunter Capt

57

SECOND STATEMENT OF L-7098 R.S.M. RYDER, G.J.

I have been warned that I am not obliged to say anything unless I wish to do so, but anything I do say will be taken down in writing and may be used as evidence.

.....
L-7098 RSM Ryder, G.J.

On my trip to LEYDEN, Holland on the 16th of March, 1946 I was in possession of a black wooden suitcase, with my name painted on it. This case contained the following: [one dressing gown (grey with blue trimmings), one pair of brown oxfords, one complete battledress, one clean change of clothing, holdall, one teakwood cigarette case with silver pencil inside, one small purse with some Roman Catholic medallions, rosary, silver cruisafix and two rings; one Kodak camera, one bottle of Scotch Whisky, one bottle of Cognac, about 150 Tartan and Legion cigarettes, some Chocolate bars and gum, some toilet soap, two or three towels.]

[The case also contained a box of jewellery consisting of: two gold pocket watches, three mens wrist watches, one tie pin with a ruble, two sets of ear rings, one diamond studded ladies wrist watch, two other ladies wrist watches, about eight assorted rings, a ladies gold pencil, one solitary stone, one single ear-ring, two silver spoons, one gold collar pin, several ornamental pins, four assorted necklaces, one bracelet made of amber coloured stones, appx 126 English One-pound notes, Four American ten dollar bills, one American one dollar bill, and some English silver money.]

The wooden suit-case also contained my rations for 48 hrs and two white silk scarfes.

All the jewellery and money mentioned in the above statement had been procured by me during my trips overseas since I left England. I got most of it through gambling on my travels through Sicily, Italy, France, Belgium and Holland.

I was taking the jewellery and the money to give to Miss Vloen, 14 LYSTERSTRAAT, LEYDEN, as on my previous trip I had already promised to turn these articles over to her for her sole benifit in order that she would have enough money to emmigrate to U.S.A. or CANADA.after things were a bit more settled.

WITNESS:.....
Lt. W.J. Panagapko,
No. 3 Cdn S.I.S.

.....
L-7098 RSM RYDER, G.J.

Exhibit B.

.....

.....

DAILY ORDER (GENERAL)

Issued by

LT-COL A.H. GOLDING

COMMANDER RCA 30 3 CDN INF DIV CASF

Last Order No. 358 4/11 Feb 46 This Order No 359 4/12 Feb 46

1. ROUTINE

Reveille	0630 hrs
Breakfast	0700 hrs
Dinner	1200 hrs
Supper	1700 hrs
Tattoo	2230 hrs
Lights Out	2300 hrs

2. DUTIES - 0800 hrs date signed until relieved

Fan Ord Offr - 13 Feb 46 - Capt Keatley
Fan Ord Offr - 14 Feb 46 - Capt Jarvis
Fan Ord Offr - 15 Feb 46 -

Fan Ord Sgt - 13 Feb 46 - S/Sgt Scott, A.N. 2/3 Coy
Fan Ord Sgt - 14 Feb 46 - C/Sgt Streeter, W.E. 2 MAC
Fan Ord Sgt - 15 Feb 46 - Sgt Tynski, A.S. 2/3 Coy

Duty NCO - 13 Feb 46 - WO3 Fairs
Duty NCO - 14 Feb 46 - A/Cpl Steeves
Duty NCO - 15 Feb 46 - 1/Cpl Palmateer

Duty Clerk - 13 Feb 46 - WO3 Fairs
Duty Clerk - 14 Feb 46 - A/Cpl Steeves
Duty Clerk - 15 Feb 46 - Pte Neufeld

Duty O/R - 13 Feb 46 - Pte Bourgeault
Duty O/R - 14 Feb 46 - Pte Blanchard
Duty O/R - 15 Feb 46 - Pte Gerton

3. PARTY

Joint Dance Party for Wednesday 13 Feb 46.

PARK NO. 3 COCLING BUSES

4. CMOM's NOs 6419, 6421, 6422, 6423, 6424 and 6426

1. The attention of all ranks is directed the n/a Orders which are att as Appendix 'A' to this Daily Order
2. Copies are att to the following Orders which will be found on NBI at Men's Quarters, Offr's Mess and RSMs Office.

5. CURRENCY EXCHANGE AUTHORIZATION FORM

1. Complaints are being received that personnel are arriving at Ivory Transit Camp and in the UK without the proper currency exchange authorization form.

2. All personnel, repeat, ALL PERSONNEL, prior to proceeding away from their unit, whether on IL to UKB, UK., Retention or Repat to Canada, will report to the Pay Office.
(TO be reported in Unit Part I Orders)

...../2

(3)

(2)

6. 11 CURRENCY REGULATIONS

1. All personnel whon postal to Germany must not , r must MUST NOT , remain oth r currencies. Overseas HQ (BAOR) No 1149 attach Forces subject to Military Law may have in his possession in Germany no currency oth r than Marks. Exchanges of currency will be made at the H.Q. 3 Cdn Inf Div (C.A.F) Pay Office in the Main Adm Bldg. (To be repeated in Unit Part I Orders)

11

Capt & Adjt
for (W.H. Collins) Lt-Col
C.A.S.C.
3 Cdn Inf Div C.A.F

Exhibit "C"

Certified True Copy

EXTRACT COPY CANADIAN ROUTINE ORDERS (NOS.1143-1168)

65

1149 - CURRENCY IN GERMANY

1. Attention is directed to Cdn RO (21 A Gp) No.651.

2. Subject to the exceptions set out in para 3 hereof, no person subject to military law may have in his possession in GERMANY any currencies other than marks; this applies to public, PRI/regimental, as well as private funds.

3. (a) Except where prevented by operational or administartive reasons, exchanges of currency (other than in advance account balances) on entering GERMANY will be carried out as bulk transactions before crossing the frontier. Exchanges of currency on leaving GERMANY will be carried after crossing the frontier.

(b) Persons subject to military law who make short visits to GERMANY (e.g. staff officers, convoy dvrs, personnel of units stationed near the frontier), may take with them currencies other than marks to the value of four days pay or in the case of voluntary workers, the equilvilant of three pounds. Such currencies will be exchanged in the normal way if any such visit exceeds ten days.

4. Advance account balances will not be exchanged but will be paid into Field Cashiers.

5. Currencies other than marks will NOT either be paid out to the troops or tendered in payment for goods or services or labour in GERMANY or exchange for marks except through official channels .

6. Cdn RO (2 1 A Gp) No.1101 is hereby cancelled

(21 A Gp GRO 1129/45 Adapted) (525/Gen/1-PMOT)

H Matthews Capt.

Capt. & Adj.
H.Q. R.C.A.S.C. 3 Cdn. Inf. Div. (CAOF)

23 Apr 46.

67

- CHARACTER REFERENCE -

I have been acquainted with the accused, RSM RYDER, since Apr 1941. During this time he has served under my command as a Sgt (47 Cdn GT Coy); WO II (CSM 41 GT Coy) and WO I (RSM HQ - RCASC 3 Cdn Inf Div CAOF).

RSM RYDER has always performed his duties in a most energetic and efficient manner.

I have always found him to be completely honest and his character beyond reproach.

Field
19 Apr 46

(W.H. Colling) Lt-Col
C, RASC
3 Cdn Inf Div CAOF

ARMY FORM B.206

69

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
L-7098	WO1 (RSM)	RYDER, G.J.	H.Q RCASC 3 CDN INF DIV (CAOF)

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.	*Since Enlistment.
For NIL	times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct,

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, ~~by~~

~~xxxx

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. L-7098 Rank WOI (RSM) Name RYDER, G.J. of RCASC Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 16 Apr day of 46

J. Malcolm, Capt
Offr having custody Regtl Records.

13 The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

To the rank of ..... years, ...

To the rank of ..... years .....

To the rank of ..... years, ...

To the rank of ..... years, ...

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books, the paragraphs must be struck through, except that in the case of a trial by field general court-martial the information may be obtained from such records as are available and the paragraphs concerned amended accordingly.)

MFM 6
(AFB 122)
10/PAS/136 (3428)

No. L-7098 Name RYDER, G.J. Sqn, Battery, or Company ~~13 Cdn Tp Carrying Coy~~ No. 61 Gen Tpt Coy R.C.A.S.C. Date of enlistment GC Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No and date of last drunk Corps 47 Cdn Gen Tpt Coy Period not reckoning towards freedom from extra fine THE DIV RCASC Sheet No Signature OC Company, etc W.H. Colling Major Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Previous Sheet destroyed on confirmation in rank of Sgt AUTH: R.O. 319 Awarded the Cdn Volunteer Service Medal and Clasp wef 10 Jan 44.			J.B.		
				CERTIFIED TRUE COPY .....Capt. (J.M. Malcolm) Offr having custody of original					

(PTO)

146 T.

Gen. RYDER, J.

146 T.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this Eighth day of October, 19 42.

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery 2nd Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~(and that it is not practicable to delay the trial to enable it to be reviewed by a superior qualified officer)~~ RCT

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

~~I am unable to appoint~~ RCT

*(1. XXXXXXXXXXXXXXXXXXXXXXXXXXXX)

*(2. XXXXXXXXXXXXXXXXXXXXXXXXXXXX)

*(3. XXXXXXXXXXXXXXXXXXXXXXXXXXXX

XXXXXXX) RCT

~~for the following reasons, namely:~~ RCT

In my opinion, military exigencies, namely the dispersion of units, and difficulties of communication, and other difficulties, render it inexpedient to observe the provisions of those rules inconsistent with Appendix "A" to D.R.O. 772 on the trial of the person named in the annexed schedule.

PROCEEDINGS REVERSED

President.

Rank.	Name.	Regiment.
Major	L.E. LICK	6 Cdn Fd Regt

Members.

Rank.	Name.	Regiment.
A Captain	Capt D. M. Wilson (to be detailed)	4 Cdn Fd Regt
A Lieutenant	Lieut L. L. Langlois (to be detailed)	4 Cdn Fd Regt
A Lieutenant (waiting member)	Lieut Lauzon (to be detailed)	4 Cdn Fd Regt

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed R.C. Dees Brigadier,

Commanding R.C.A. 2 Cdn Div.

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
C18519 Gnr RYDER J	FIRST CHARGE A.A. SEC. 40 W O A S, Conduct to the prejudice of good order etc. (see charge sheet attached)	Not Guilty	Guilty 60 days detention 8 Oct 42	Confirmed R C Dees Brigadier C.R.A. 2 CDN. DIV.
	SECOND CHARGE A.A. SEC. 8 (2) W O A S, Using threatening language to his superior officer (see charge sheet attached)	Not Guilty	Guilty L. E. Link Major R C A	

19 Nov 42.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*): Nil

(Signed) R C Dees (P.C. Tees) Brigadier
Commanding R.C.A. 2 Cdn Div.

(Signed) L. E. Link Major R C A.
President.
Convening Officer (c)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the eighth day of October 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
~~3. The interpreter~~
*(4. The officers under instruction)

* Omit if not applicable.

were duly sworn.

Signed this eighth day of October 1942.

L. E. Link
President of the Court Martial.
Major R.C.A.

C. Certificate in case of death sentence.

* See footnote (i) on page 762 M.M.L. 1939.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*I direct that the soldier named in the margin be not committed to prison until further orders.~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 9th day of October 1942

R C Dees Brigadier,
C.R.A. 2 Cdn Div *Confirming Officer.*

Promulgated and extracts taken in the case of C18519 Gnr Ryder J.

(a) (Dated) 12-10-42 (Signed) John D Harmon Capt.
Adjutant 4th Fd. Regt. R.C.A. C.D.

~~Promulgated and~~ extracts taken as amended in the case of C18519 Gnr Ryder J

(Dated) 25 Nov 42 (Signed) John D Harmon Capt
Adjutant 4th Fd. Regt. R.C.A. C.D.

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

ADJA

2RA/5-4
RCA 2 Cdn Div
29 Nov 42

2 Cdn Div (A)

FINDING AND SENTENCE - F.G.C.M.
C18519 Gnr RYDER J., 4 Cdn Fd Regt RCA

1. Returned herewith are proceedings of FGCM in the case of the m/n soldier, with the findings on the 1st charge quashed, as per instructions in CMHQ letter 10/Ryder, J/1 (JAG) dated 14 Nov 42.

2. It is recommended that, although the finding on this charge is quashed, the sentence awarded be allowed to stand, since the facts upon which the finding and sentence were made is identical in both charges.

3. The alteration of finding has not been conveyed to the soldier under sentence, since he is at present on strength of No. 1 CARU, while undergoing detention.

(P.C. Tees) Brigadier
D.A.A.G. 2 Cdn Div

3 Dec 42

I concur. Recommendation

GOC, 2 Cdn Div

B2

CHARGE SHEET

The accused C18519 Gnr Ryder, J. of the 2 Fd Bty, 4 Cdn Fd Regt, R.C.A., a soldier of the Canadian Army (Overseas) is charge with:

FIRST CHARGE
Sec 40
Army Act

WOAS " Conduct to the prejudice of good order and military discipline" in that he, In the Field, at approximately 2100 hrs on the 4th Oct 42 when asked by Bdr Hughes, M.C. to cut his hair and during the discussion which followed said "Nothing would please me more than to poke you now, but I'll get you yet" or words to that effect.

SECOND CHARGE
Sec 8(2)
Army Act

WOAS "Using threatening language to his Superior Officer" in that he, In the Field, at approximately 2100 hrs on 4th Oct 42 when asked by Bdr Hughes, M.C. to cut his hair, and during a discussion which followed, said, "Nothing would please me more than to poke you now, but I'll get you yet", or words to that effect.

(P.A.S. Todd)Lt.-Col.
Comd 4 Cdn Fd Regt, RCA

4 day of Oct 1942
In the Field
To be tried by F.G.C.M.

R.C. Dees Brigadier
C.R.A. 2 Cdn Div

I, C18519 Gnr. Ryder, J., 2 Cdn Fd Bty, 4 Cdn Fd Regt, R.C.A. desire to have an officer assigned to represent me at my trial by Court-martial.

I desire the services of .....
if he is available

.....

Dated In the Field
This 3 day of October
1942

3rd. Battery [redacted] 4th Can Regt R.C.A. Unit or Battalion

8 October 1942

MORNING SICK REPORT

Regt'l No	RANK AND NAMES (Christian Name in full)	Age	Religion	Admitted (sick) or Injured	Married or Single	DISEASE	Medical Officer's Remarks and Initial
C18519	Gnr. Ryder J.				M	Fit for coys Medical	A.H. Smith Capt.
						L. E. Kirk R.C.A. Major	

Medical Officer — Arthur J. Wicke Orderly N.C.O.

8 Oct

OVER

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

FIELD

**Form of Proceedings for General and District Courts-Martial

Proceedings of a Field General Court-Martial held ~~at~~ In the Field on the 8th day of October 1942 by order of P.C.Rees, Brigadier Commanding, R.C.A. 2 Cdn Div. dated the 8th day of October 19 42.

President.

Major L.E.Lick - 6 Cdn Fd Regt., R.C.A.

Members.

Capt. D.M.Wilson - 4 Cdn Fd Regt., R.C.A.

Lieut.R.S.Douglas- 4 Cdn Fd Regt., R.C.A.

Lieut. Lawless- 4 Cdn Fd Regt., R.C.A.

No , Judge Advocate.

Trial of* C.18519 Gunner RYDER, J., 2 Fd Bty, 4 Cdn Fd Regt., R.C.A.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that n/a is not available to serve owing to

, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Captain J.D.Harrison, (Barrister) 4 Cdn Fd Regt., R.C.A.

Counsel‡ or defending officer† Lieutenant J.M.Owen - 4 Cdn Fd Regt., R.C.A.

At 1000o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Mil. Form B. 271
10M—3-41 (9670)
H.Q. 1772-39-224

L E Lick
Major R.C.A.

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Lieut Hawkes 4 Cdn Fd Regt R.C.A.

Charge-Sheet

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Not Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have Leard read? *Question.*

Not Guilty *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

N/A *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

N/A *Answer.*

The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

L. G. Link
Major R.C.A.

C

Proceedings on Plea of Not Guilty

*Instruction. (See R. P. 39 (A))

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No

The prosecutor makes an opening address [hands in a written address, which is read, marked , signed by the President, and attached to the proceedings].

The prosecutor proceeds to call witnesses.

First witness for prosecution. C.19682 Bdr. HUGHES, M.C., 2 Bty., 4 Cdn Fd Regt., R.C.A. Canadian Army, Overseas,

being duly sworn, is examined by the prosecutor.

"I am a Bdr in 2nd Bty 4 Cdn Field Regiment, R.C.A. The accused C.18519 Gunner Ryder, J. is a gunner in the same Battery. On 1st October 1942 I went to see the accused in his quarters at about 1820 hours to have him cut my hair. Gunner Ryder has been cutting hair in the battery for some time. When I saw the accused he informed me that he wanted to go to a show. I asked him if he would cut it after the show and he said he would be cutting some then.

At approximately 2040 hrs I went to Gunner Ryder's room and waitsd for him. Ryder came in and told me he wouldn't cut my hair as he was going to clean his web. I had been trying to get Ryder to cut my hair for the past week and as I left his room said that I hoped he would not be allowed to cut any more hair.

Gunner Ryder hearing those words came after me and said, "What was that you said", I repeated the statement whereupon Gunner Ryder seized me by the shoulder and raised his fist. I grabbed hold of his elbow and told him to watch what he was doing. Gunner Ryder then said "Nothing would please me more than to poke you now but I will get you yet anyway" or words to that effect.

Questioned by the Court

Q. Did you believe that Gunner Ryder was going to strike you ?
A. The raised fist was coincidental with several motions leading me to believe I had to defend myself.

Prosecuting Officer requested permission to submit as evidence a statement on oath made by the accused, No objections were made by the defence and the statement is attached as Exhibit "A".

L. E. Link
Maj R.C.A.

Statement made by the accused C.18819 Gnr.WYDER, J., 4th Field Regiment, R.C.A. - Not on oath.

" I am not admitting raising my fist to Bdr Hughes because if I had I would have hit him, I do not know whether or not in the dark Bdr.Hughes would have known if I had raised my fist. I have kind of a temper and might have said what is in the charge sheet and I might not have."

Accused called no witnesses

Only evidence of character submitted was A.F.B. 296 and M.F.M. 6 Exhibits "B" and "C" respectively, filed by Prosecuting Officer after finding.

In mitigation Defending Officer submitted that there was provocation in the threat of Bdr.Hughes to prevent the accused from cutting hair in the future.

D

The prosecution is closed.

Defence

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. No

Question. Do you intend to call any other witness in your defence?

Answer. No

Question. Is he a witness as to character only? *Answer.*

INSTRUCTIONS TO THE COURT

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(*Where any evidence is given for the defence.*)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(*Where the accused does not give evidence upon oath.*)

Question to the accused. Have you anything to say in your defence? Yes

Answer. The accused in his defence says†

[Hands in a written address which is read, marked signed by the President and attached to the proceedings.]

" I am not admitting raising my fist to Bdr Hughes because if I had I would have hit him. I do not know whether or not in the dar Bdr.Hughes would have known if I had raised my fist. I have kind of a temper and might have said what is in the charge sheet and I might not have."

L. E. Lush
Accused

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

E

Finding*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused has been found guilty on both charges.

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Capt J. D. Harrison, Prosecuting Officer is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes - A.F.B. 296 M.F.-M.H. 6

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked —, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes.

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes.

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes.

[Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Cross-examined by the accused. - None.

Question to the accused.

Do you wish to address the Court? *Answer.* No.

The Court is closed for the consideration of the sentence.

L. R. Lisk
Major R.C.A.

F

Sentence

The Court sentence the accused *Sentence.*

to undergo 60 days detention.

L. E. Kirk
Major R.C.A.

2

What he said & he kept on going so I went out and grabbed him & I told him to repeat it. It was pretty dark in the hall & I may have said my fist - we couldn't see each other in the hall. I can't just say what I said to him I was so mad I just cant remember what I said. I went back to my room and cleaned my webb.

Exhibit "A"

1 Lt. R.C.A.

Lt. R.C.A. 18519 Gnr Ryder J. having been duly warned. (M.M.L. chap 8 p 92 sec 78(5)) and having been duly sworn stated:

about 1815 Oct 11"

Bdr Hughes came into my room & I was busy cutting hair & I told him then were about 50 waiting and that I wasn't going to cut any more till after the Show. After the show he came in my room & I told him we had orders to get our webb cleaned and I wasn't cutting any hair that night. He proceeded to get pretty sore & he swore that he would see that I never cut another head of hair in the Battery. He said that as he was going out and I asked him to repeat

John D. Harris Capt

Exhibit "K"

M.F.M. 6
A.F.B. 122
20M—8-40 (1944)
H.Q. 1072-40-18

No. C18519 Name Ryder, J. Sqn., Battery, or Company 14 Fd Regt Corps R.C.A. Date of enlistment 5.9.39 G.C. Badge Service or Proficiency Pay Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or if under close arrest with trial	By whom awarded	Remarks
Burwash	24-12-41	L/Bdr		AA 40 Failing to obey an order	Gnr MacAlear Gnr Kinkley	Reprimand	3-1-42	(F.P. Lloyd) Lt.-Col.	
Field	19 Jul 42	Gnr		Sec 40 A.A. Conduct, etc., communicating with an unauthorized person.		Documentary Forfeits 10 dys pay	8 Aug 42	(P.A.S. Todd) Lt.-Col.	

CERTIFIED TRUE COPY
Adjutant 14th Fd. Regt. R.C.A.

L E Keith Lieut
major

(P.T.O.)

(Substitute for AFB 296)
or MFB 355

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED

No. C16519 NAME Gnr Ryder, J. UNIT 2 Bty - 4 Cdn Fd Regt, R.C.A.

AGE 33 MARRIED OR SINGLE M NO. OF DEPENDENTS 3

DATE OF ATTESTATION 2 Sep 1939

NO. OF DAYS SPENT IN CLOSE ARREST (TO DATE OF TRIAL)

CIVIL nil MILITARY nil HOSPITAL nil TOTAL nil

DATES OF PROMOTIONS, APPOINTMENTS AND CONFIRMATION OF RANK, IF ANY

To A/B 11.7.40 w.e.f. ~~11.7.40~~ confirmed B/Bdr 14.2.41
~~Reverts to Gnr at his own request 9.4.41~~ A/Bdr 28.5.41
Reverts to B/Bdr on admission 15th Fd Hospital 20.6.41
~~Reverts to Gnr at his own request 8.1.42~~

A CERTIFIED TRUE COPY OF THE M.F.M. 6 MUST ACCOMPANY THIS FORM

(Officer i/c Records)
4th Cdn Fd Regt RCA UNIT

Dated at [illegible]
this 8th day of October 1947
(To be dated and signed as of date of trial)

Z-129

PTE RYLANCE J.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

day Order convening the Court.

On Active Service, this Fourth day
of March , 1943.

Whereas it appears to me, the undersigned, an officer in Command of 1 Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~[and that it is not practicable that the trial of the said persons should be postponed]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

~~[I am unable to appoint]~~
~~[Three officers to form the Court]~~
~~[A Field Officer as President]~~
~~[the following persons namely:]~~

D.W. Banton Major
Pres.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.		
Rank.	Name.	Regiment.
Major	D.W. Banton	48 Highrs
Members.		
Rank.	Name.	Regiment.
Capt	R.M. Dillon	RCR
Lieut.	A.G. Magee	Hq 1 Cdn Inf Bde
Lieut	G.G. Brown	48 Highrs
Waiting Member		

*Signed H.D. Graham Brigadier
(H.D. Graham)
Commanding 1 Cdn Inf Bde
Convening Officer.

*Signature to be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B72767 Pte RYLANCE, John 48 Highlanders of Canada	FIRST CHARGE A.A. Sec 15 (4)	not Guilty	Not Guilty	Finding and sentence confirmed but remit
	SECOND CHARGE A.A. Sec 15 (4) (ALTERNATIVE)	not Guilty	Not Guilty	
	THIRD CHARGE A.A. Sec 15 (4)	not Guilty	Guilty	6 months detention
	FOURTH CHARGE A.A. Sec 40 (ALTERNATIVE)	not Guilty	~~Guilty~~ Not Guilty	13 Mar 43
	FIFTH CHARGE A.A. Sec 40	Guilty	Guilty 12 months Detention	

A.W. Banton. Maj. Pres

6 Mar. 43

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— No Sir.

(Signed) H.D. Graham Brig. (Signed) A.W. Banton Major
(H.D. Graham) (D.W. Banton)
Commanding 1 Cdn Inf Bde *Convening Officer* (*c*) 48 Highrs of Canada. *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the sixth day of March 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) ~~duly~~.
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this sixth day of March 1943

A.W. Banton. Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*I direct that the soldier named in the margin be not committed to prison or detention barrack until further order.)

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 13 day of Mar 1943

H.D. Graham
(H.D. Graham) Brigadier
Comd *Confirming Officer.*
1 Cdn Inf Bde.

Promulgated and extracts taken in the case of B72767 Pte Rylance John 48 Highrs

(*a*) (Dated) 14 Mar 43 (Signed) Fmbk McLachlan Lt A/Adjt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

W1. 47767/1937 30 M. 5/43 K.H./5265(2) Gp. 698/3

48th Highlandersof Canada

B2.

CHARGE SHEET

The Accused B.72767 Pte. John RYLANCE of Sp. Coy 48th Highlanders of Canada, a soldier of the Canadian Army (O/S) is charged with:

FIRST CHARGE ~~XXXXXXXXXXXXX~~ XXXXXXX
Sec. 17 (d) ARMY ACT

When on Active Service, Stealing property belonging to a person subject to military law,

in that he, in or about June 1942
In the Field, did steal from Major L.M. Crawford-Brown 48th Highlanders of Canada, a person subject to military law a .38 automatic pistol (Savage).

~~XXXXXXXXXXXXXXXXXX~~ XXXXXXXXXX
SECOND CHARGE
Sec. 18 (d) ARMY ACT
(ALTERNATIVE CHARGE)

When on Active Service, Receiving, knowing it to have been stolen, property belonging to a person subject to military law,

in that he, in or about June 1942
In the Field, did receive, knowing it to have been stolen, property belonging to a person subject to military law, a .38 automatic pistol (Savage).

THIRD CHARGE ~~XXXXXXXXXXXXXX~~ XXXXXXXX
Sec. 17 (d) ARMY ACT

When on Active Service, Stealing public property,

in that he, at a time and place unknown
In the Field, did steal a Enfield .38 revolver No.8577 No.2 Mk.1 being public property.

~~XXXXXXXXXXXXXXXXXX~~ XXXXXXX
FOURTH CHARGE
Sec. 40 ARMY ACT
(ALTERNATIVE CHARGE)

When on Active Service, Conduct to the prejudice of good order and military discipline,

in that he,
In the Field, was improperly in possession of Enfield .38 revolver No.8577 No.2 Mk.1. on or about 15 Feb. 43.

~~XXXXXXXXXXX~~ XXXXXXX
FIFTH CHARGE
Sec. 40 ARMY ACT

When on Active Service, Conduct to the prejudice of good order and military discipline,

in that he,
In the Field, was improperly in possession of 500 rounds of .22 Winchester "LEADER" amm. being public prope ty. on or about 15 Feb 43.

In the Field,
3 Mar. 43.

J.S.P. Armstrong Major
(J.S.P. ARMSTRONG) Major,
Officer Commanding,
48th Highlanders of Canada.

To be tried by Field General Court Martial

H.D. Graham Brigadier
(H.D. Graham)
Comd., 1 Cdn Inf Bde.

In the Field
4 Feb 43.

D.W. Barton. Major
Pres.

I certify that I have this morning examined No B72767

PTE. RYLANCE. J. of 48 HIGHRS OF CAN

[redacted]

tation IN THE FIELD

ate 6 MAR. 43

Capt. R.C.A.M.C.

DW Banton Major
Pres.

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a Field General Court-Martial held ~~at~~ in the Field on the 6 day of March 1943 by order of Brig. H.D. Graham Commanding 1 Can. Inf. Bde. dated the 4 day of March 1943.

D.W. Banton. Major President.
48th Highlanders of Canada.

Members.

Capt. R.M. Dillon, R.C.R.
Lieut. W.G. Magee, H.Q. 1 Can. Inf. Bde.

~~, Judge Advocate~~ Asst B.

Trial of* B72767 Pte. Rylance, John.

The order convening the Court, the charge-sheet and the summary ~~(or abstract)~~ of evidence are laid before the Court.

~~The Court satisfy themselves that is not available to serve owing to~~

~~, waiting member takes his place as a member of the Court.~~ Asst B.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Lieut H. Cassels - 48 Highrs.

Counsel‡ ~~or defending officer~~† Lieut L.M. McBride - Seaforth Highrs attd R.C.R. Graduate of Law.

At 1100 o'clock the Trial commences.

The order convening the Court is read, and is marked A. signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No, sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Mil. Form B. 271
10M—8-41 (3819)
H.Q. 1772-39-224

D.W. Banton. Major
Pres.

B

Duly B.

The President, members ~~and judge-advocate~~ are duly sworn.

The following officers under instruction are duly sworn.

Lieut. G. G. Brown, Seaforth Highrs
att'd 48 Highrs.

Charge-Sheet

Instruction.
If the accused has elected to be tried under Army Act, sec. 20 (8) the fact should be here recorded.

The charge sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Not Guilty. *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Not Guilty. *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Not Guilty. *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Not Guilty. *Answer.*

Are you guilty or not guilty of the fifth charge against you which you have heard read?

Guilty ANSWER.

The accused having pleaded Guilty to the fifth charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Duly B.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

D. W. Barlow. Major
Pres.

C

*Instruction. (See R. P. 39 (A))

Proceedings on Plea of Not Guilty

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No, sir

The prosecutor makes an opening address [hands in a written address, which is read, marked CA, signed by the President, and attached to the proceedings].

The prosecutor proceeds to call witnesses.

First witness for prosecution.

ON FIRST AND SECOND CHARGES.

Major L. M. Crawford-Brown, 48 Highrs.

being duly sworn, is examined by the prosecutor.

I am Major L. M. Crawford-Brown, at present Coy. Comd. of H.G. Coy. 48 Highrs and formerly O.C. of "C" Coy. 48 Highrs. I recognise the accused as Pte. Rylance, formerly a member of "C" Coy. This gun, marked Exhibit "B" was purchased by me in TUNBRIDGE WELLS in July of 1940 in the presence of Capt. K.T. Whyte also of this unit. It remained in my possession until sometime about EXERCISE "TIGER" when it disappeared. The loss was reported to the LITTLEHAMPTON Police and they were also given the serial number of the gun which has since been filed off. While in TUNBRIDGE WELLS I cut a notch on the left side of the pistol grip, which you can see on the grip. This type of gun is extremely scarce and my guess is that there wouldn't be more than a half-(2)-a-dozen like it in England.

(P.T.O.)

W.O. Bandsr. Prov. Pse.

D.W. Banton. Major.
Pres.

C2

The last time I am definitely sure I had the gun was on EXERCISE "BEAVER III" in April 1942.

QUESTION:- Did anyone else know that notch was on the gun?

ANSWER:- Yes, Capt. K.T. Whyte and my batman Pte. Windsor.

QUESTION:- Was "BEAVER III" the last time you remember having the gun?

ANSWER:- It is the last time I can swear to having it.

QUESTION:- Where was the gun left after "BEAVER III."

ANSWER:- To the best of my knowledge it was left in my trunk in the billet prior to going on EXERCISE "TIGER" but I cannot swear to that.

QUESTION:- How did you discover the loss of the gun?

ANSWER:- The loss was discovered when my batman looked for the gun to clean it after our return from Home Guard Training at MIDHURST.

R.P. 83 (B) complied with.

2ND WITNESS FOR PROSECUTION ON FIRST AND SECOND CHARGES.

B72659 L/Cpl. WILSON. E.L. 48 HIGHRS having been duly sworn states:-

I am the assistant Pay Clerk of the 48th Highlanders of Canada. I recognise the accused as Pte. Rylance. Sometime approximately the 15 November 1942 I received from Pte. Rylance a .38 revolver which I recognise as EXHIBIT "C" by the sawn-off barrel. He gave this to me in exchange for a kilt. About the 10th February 1943 I met Pte. Rylance in BRIGHTON when he asked me if I would consider trading my .38 revolver for a .32 automatic.

(CONT.)

which he had. I said I would providing I could get ammunition for it. About the 15 February 1943 we exchanged guns. I recognise the gun EXHIBIT "B" as the one I received, by the notch in the butt and by the fact that the number had been filed away.

Accused declines to cross examine.
R.P. 83 (B) complied with.

FIRST WITNESS FOR PROSECUTION ON THE THIRD CHARGE.
C41986. SGT. CARRIERE, J.R.R., CDN. PROV. CORPS, having been duly sworn states:-
I am a Sergeant of the Special Investigation Section of the Canadian Provost Corps, C.M.H.Q. I now recognise the accused, Pte. Rylance. On 16 February 1943 at about 1000 hrs. I saw Pte. Rylance at Cdn. Prov. Corps H.Q. in Henrietta St. LONDON, where he was being detained. Among his possessions was a .38 ENFIELD revolver with the barrel partly sawn off, which I now recognise as EXHIBIT "C". I spoke to the accused and telling him who I was asked him if he wished to explain where he had got this revolver. Before further conversation could be carried out I was notified that I had to attend Court, so told Pte. Rylance that I would see him on my return. The same day at approx. 1400 hrs. I again saw Pte. Rylance and after cautioning him, he made a statement in his own handwriting. This I now produce.

(P.T.O.)

(Sgt. Carriere. J. R. R.) C4.

Pte. Rylance made this statement of his own free will.

The accused declines to cross-examine. R.P. 83(B) complied with.

The written statement of Pte. Rylance and produced by Sgt. Carriere is read and marked CB, signed by the President and attached to the proceedings.

STATEMENT BY THE ACCUSED ON THE THIRD CHARGE.
(B 24142 PTE. RYLANCE

CB.

D. W. Banton Major
Pres.

CC

Proceedings on Plea of Guilty

*To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused B72767 Pte. Rylance, John.
is found guilty of the fifth charge as read.

*The summary ~~(or abstract)~~ of evidence is read, marked S, signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment ~~says~~

~~has~~ hands in a written statement, which is read, marked M, signed by the President, and attached to the proceedings.]

Instruction.

* If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

D. A. Banton. Major
Pres.

Do you wish to give evidence yourself or to call any witnesses as to character? *Question to the accused.*

No. sir *Answer.*

Evidence as to character.

H. C. Banton Major
Pres.

(S.) 1.

Summary of Evidence in the Case of B72767 Pte Rylance (John) 5th Coy 45 Highrs a soldier of the Chs Army Overseas.

The Commanding Officer directs that all evidence be taken on oath.

1st Witness for the Prosecution: Maj L Crawford Brown O.C. H.Q. Coy 45 Highrs Chs Army Overseas, having been duly sworn states: "I am Maj L Crawford Brown of 45 Highrs was H.Q. Coy Comd & formerly O.C. C Coy. I recognise the accused as pte Rylance formerly of my old Coy.

In July 1940 I was stationed with Capt K.T. Aby-Ld of 45 Highrs in TUNBRIDGE WELLS working on the Construction of what was then known as the GHQ. stop line. Whilst there I was able to buy a .32 Savage Automatic pistol. The gun was purchased by me in the presence of Capt Aby-Ld & remained in my possession until sometime in the Spring of 1942 when it was stolen from me.

I can definitely swear to having had the gun with me at the time of BEANER III. Between the time we went on exercise TIGER & the period following during which C Coy was at MIDHURST for Home Guard Duty I thought the gun had been locked in my trunk in my billets at LITTLEHAMPTON. However, on search being made the gun was missing although the shoulder strap (Holster) was found I kept it was missing still in the trunk. A complete search of the billets was made, also an inspection of the Coy. I wired to COVENTRY for the number of the gun which was in my forpit there & then along with an account of the loss was reported to the LITTLEHAMPTON police. However the gun was not found.

By your accident, a few nights ago Capt Cresswell mentioned a .38 revolver with a sawed-off barrel which had been found in pte Rylance's possession. He also mentioned the breakdown little .32 which had come to light in connection with this case. By questioning I found that it was a Savage .32. These guns are very rare

W.N. Banton Major
Pres.

(S)

and I doubt if there are half a dozen more like it in ENGLAND. My suspicions that the gun & matches might be mine were aroused & I asked to see it.

Before producing the gun he asked me in the presence of persons & police to describe it to him. The main point of identification which I mentioned was a number cut on the left side of the butt — this notch was cut by me at TUNBRIDGE WELLS in the presence of Capt Whyte & at the same time as he cut a similar notch in his Colt .45 & received back from JK on parade in the 5th Gordons the news of whose annihilation or capture had just been made public. When the Adjutant produced the gun I recognised it instantly. The gun marked Exhibit B is this gun & the notch in the left of the butt is the one I referred to in 1940. The No. of the gun was stamped on the front end of the body portion & has since been filed off, however, I understand that by means of x-ray or acid treatment it could be brought out. My batman at Windsor has cleaned this gun for me innumerable times & I feel sure he could also identify it. I also think Capt Whyte could identify it.

VC

Signed L. Stamford Brown

Question by the Accused: "Sir. Are you sure that you had the gun in SCHEME BETWEEN ?"

Ans: "Yes absolutely positive. I wore it in the shoulder holster.

Question by the Accused: "Did you hear the gun in SCHEME TIGER Sir?"

Ans: "I am quite certain that the gun was not taken in TIGER, my batman will corroborate that."

Question by the Accused: "Are you sure that you didn't take the gun in to MIDHURST Sir?"

H. W. Banton Major
Pres.

Ans: "Yes absolutely sure."
Quest by the accused: "When was the loss discovered?"
Ans: "Within a week of our return from MIDHURST."

2nd Witness for the Prosecution: B 7265 9 L/Cpl Wilson E. L. Army Clerk 4/8 Highrs Cdn Army Overseas having been duly sworn states: "About 15 Nov 42 Pte Ryland asked me what I wanted to sell my kilt for. I told him £5; later, he asked me if I would take a gun & £1 for it. This I did, the gun being a ~~Smith~~ S&W .38 Enfield revolver which I now identify & is marked Exhibit C. Approximately 17 Feb 43 I met Pte Ryland in BRIGHTON when he asked me if I wanted a .32 automatic which he owned. I said yes, if I could communicate for it. Then on 15 Feb 43 he exchanged guns & I received the .32 which I now identify & is marked Exhibit B.

Signed E L Wilson

The witness declined to cross-examine the witness.

3rd Witness for the Prosecution: C 41986 Rfn Carriere J.R.R. Cdn Provost Corps Special Investigation Section C.M.H.Q.

I certify that the presence & loss of time involved the attendance of this witness is not readily procurable & attached herewith is a written statement of his evidence signed by him has been read to the accused & is ~~attached~~ marked Exhibit A

J. Carrière Rfn
C/P details & Cdn Provost Corps.

I do not require the attendance of this witness for purposes of cross-examination.

Signed Pte J. Ryland.

D. B. Banton Major
Pres.

4th Witness for the Prosecution:

B 73532 Sgt Kearney J.J. Orderly Room Sgt 48 Highrs Cdn Army Overseas having been duly sworn states: "I present herewith Savage Automatic .32 Calibre with Number filed off marked Exhibit B; & .38 Enfield pistol issue revolver No B 5577 marked Exhibit C (it has been issued to Carrill) & 50 rounds of Winchester .32 long rifle ammunition which is marked Exhibit D. all of which were put in my Custody by a Cpl of the Cdn Provost Corps shortly after the Rybacin arrest.

Signed J J Kearney Sgt.

The accused declined to Cross examine the witness.

5th Witness for the Prosecution:

B 73311 Sgt Thomas T. Sgt. Cdn 48 Highrs Cdn Army Overseas having been duly sworn states: "I am Pl Sgt of No 5 Pl (G.R.U.) to which the accused is a member & as such responsible for the Pl stores.

Ques by Sgt taking the Summary: "Have you seen any of the type (Winchester .32 long rifle AMMUNITION) of ammunition before?"

Ans: "Yes in my stores."

Signed T. Thomas Sgt.

The accused declined to Cross examine the witness.

The accused was duly warned & reserved his defence. Rules of Procedure 44 (a)(d)(e)(f) have been complied with.

Taken before me at the Jails at STONEHAM SUSSEX this 2 day of March 1943 in the presence of the accused.

T. Cossart Lieut.
48 Highrs - Pl. Detailed to take Summary.

P.W. Barton Major
Pres.

CA

RE CHGE 1

I submit to the Court that the accused has been proved guilty of the chge of stealing as set out in Chg 1 of the chge sheet. (a) The elements of the offence of stealing set out in para 33 prge MML 22 I submit have been shown. (1) The ~~weapon~~ property was carried away without the consent of the owner without a claim of right. etc (2) ~~with intent~~ to deprive the owner thereof.

That the weapon belonged to Maj Chas Ross I submit has been established by the identification of the weapon.

That the weapon was discovered in the possession of the accused also has been proved.

The law says that a man intends the natural consequences of his acts - he ~~carried~~ possessed the gun drawing it to attract attention to himself thereby depriving the owner of it.

The onus therefore both with the accused to show his legal right to the gun - this he has failed to do.

H. Cassels Capt
Prosecutor

D. W. Banton Major
Pres.

CB

CANADIAN PROVOST CORPS.
Special Investigation Section.
C.M.H.Q.

B. [illegible] Reference [illegible] 48 H. of Cas.

STATEMENT of [illegible] cioned by Sgt. CARRIERE J.R.R. of the Special Investigation
I have [illegible] Canadian Provost Corps, C.M.H.Q., that I am not obliged to say any-
Section unless I wish to do so, but everything I do say will be taken down
this writing and may be used in evidence.
I understand this caution and wish to make a statement and to show that I
understand this caution I sign my name here.

..Lt. John Ryerse...

During a scheme called Breast Stroke I think this was in August 1942. I was driving a jeep for the Anti tank Platoon. at a place near Lewes I had occasion to take our Coy. Commanders, to a conference given by the Brigadier. I parked with a bunch of other jeeps from various units. When I returned to my vehicle I found that someone had placed webbing equipment and a .38 revolver in the jeep. As I knew it did not belong to my officers because they were wearing their weapons. I took the revolver and placed the equipment in the jeep I believed it came from. Nothing was no inquiries made I took this gun back to my unit.

I kept this gun in my possession until about the end of October when I went on leave to Wigan. Lancs. After having it that long. I considered it my property. so I decided to have it made more convenient to keep around, so I had the barrel shortened in Bolton. Lancs. Just previous to my leave at the end of November. I left this gun B 85577 with a friend in the unit, in exchange for a complete dress uniform On Feb 15/43 which was payday. I got the gun back from him. and. as I was in a hurry to go on leave, I put it in my pocket. instead of in my kit-bag. I carried it there to London where it was found when I was searched by the Provost. With regards to the 6 rounds of .38 ammunition. I acquired it as souvenirs over a period of 3 years.

D.W. Banton Major
Pres.

With regards to the 50 rounds of .22 Winchester ammunition I accumulated this ammunition from various Stores over a period of several months for use in target shooting. A girl in London offered me the use of her range with my own ammunition so at the first opportunity I came to London with the ammunition. When I got here I could not find the right place, so I turned in the ammunition to the Police as I did not want to take it back with me.

Pte John Rylance.

Statement made in the presence of Sgt I.R. Barnes. S.I.S. Can. Prov. Coys. CMH Q. London
to Feb. 43.

D.V. Canton. Major
Pres.

With regards to the 500 rounds of .22 Winchester ammunition. I acquired this ammunition from Company Stores over a periods of several months for use in target shooting. A girl in London offered me the use of her range with my own ammunition so at the first opportunity I came to London with the ammunition. When I got here I could not find the right place, so I turned in the ammunition to the Police as I did not want to take it back with me.

Pte John Rylance.

Statement made in the presence of Sgt R Barnes.
S. I. S. Gen. Prov. Coy. CMH L. London
16 Feb. 43.

W.V. Banton. Major
Pres.

I would like to point out to the court the fact that the accused voluntarily turned in the 500 rds of ammo to the provost in London. Sgt Carver of the Provost Coy has told the court that the accused cooperated with them in every way by giving information on the .38 and the 500 rds. I would like the court when considering judgment to take into consideration that this is the first serious trouble the accused has been in after over three years of soldiering in this country.

L. M. McBride
Defending Officer

M.

D. L. Banton. Major.
Pres.

D

The prosecution is closed.

Defence

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. yes. sir.

Question. Do you intend to call any other witness in your defence?

Answer. No. sir.

Question. ~~Is he a witness as to character only? *Answer.*~~ Nil B.

INSTRUCTIONS TO THE COURT

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence? yes. sir.

Answer. The accused in his defence says†

~~[Hands in a written address which is read, marked signed by the President and attached to the proceedings.]~~ Nil B.

I admit that I did take the revolver but I would like the Court to consider it to be more in the nature of "scrounging" than that of actual theft. I had always wanted a revolver and when the opportunity presented itself of getting one as easily as I got this one, I didn't look

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, see Instructions to the Court *above*.)

(P.T.O.)

H.W. Banton Major
Pres.

D2

on it as theft but just as "scrounging".

R.P. 83(B) complied with.

Instruction.
The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

W. de. Banton. Major
Pres.

E

Finding

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused is NOT GUILTY on the first and second charge as read but is GUILTY on the third charge as read.

The fourth charge was withdrawn.

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Lieut. H. Tassels, 48 Highrs. is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes, sir

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked E 2, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes sir

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes sir

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes sir

~~cross-examined by the accused.~~ Nob.

[Observation.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the duties of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* No. sir.

The Court is closed for the consideration of the sentence.

D. W. Banton Capt
Pres.

F

Sentence

The Court sentence the accused to 12 months Detention. Sentence.

D. W. Banton. Major
Pres.
6 March 1943.

The Court would like to point out that despite the fact that Pte. Rylance was found NOT GUILTY on the first and second charges as read, that they are quite satisfied on the evidence produced during the trial that the ownership of the .32 Savage automatic gun in question has been proven as that of Major L. M. Crawford-Brown of the 48th Highlanders of Canada and recommend that after the review and promulgation of the case has been made that the said gun be returned to Major Crawford-Brown.

D. W. Banton. Major
Pres.

48th Highlanders of Canada

Battalion Headquarters,
2 Mar 43.

Comd,
Headquarters,
1 Cdn Inf Bde.

FIELD GENERAL COURT MARTIAL

1. I hereby certify that I desire an officer appointed by the Convening Officer to defend me at my pending trial by Court Martial.

2. It is my wish that a officer be appointed from a Unit other than 48 Highrs.

Pte J Rylance
B.72767 Pte. Rylance, J.

D.H. Barton Major
Pres.

M.F.M. 6
(A.F.B. 122)
(19M—7-41 (1210-39)
H.Q. 1773-39-1852

No. B.7276 Name RYLANCE, J. Sqn., Battery, or Company — Corps 48th Highlanders of Canada — Date of enlistment 6 Sep. 39 — G.C. Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. — Signature O.C. Company, etc.

E2

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Newdigate	2-8-40	Pte.		A.A. Sec. 40 Conduct to the Prej in that he was late for parade	Sgt. C. Waite	2 days C.B.	3-8-40	Capt. D.A. Mackenzie	
Reigate	17-10-40	Pte.		A.A.Sec. 40. Conduct to the Prej in that he was improperly dressed	C.S.M. Burdis	7 days C.B.	19-10-40	Capt. D.A. Mackenzie	
Reigate	18-1-41	Pte.		A.A.Sec.40 Conduct to the Prej. in that he was late for parade	Sgt. C. Waite	7 days C.B.	18-1-41	Capt. D.A. Mackenzie	
Field	30-12-41	Pte.		A.W.L. from 2359, 30-12-41 to 1700 hrs 22-8-41 (5 hrs 45 Mins)	Sgt.Meunier L/Cpl.Wilson	14 days C.B.	15 Jan 42	Major L. Crawford-Brown	Forfs 28 D.P.
Field	23-4-42	Pte.		A.A.Sec.9(2) disobeying an order	C.S.M.Burdis	5 days C.B.	30-4--42	Major L. Crawford-Brown	
Field	5-5-42	Pte.	"	A.A.Sec.40. Conduct to the prej. still in bed at 0700 hrs after being called at 0630 hrs.	L/Cpl.Wilcox	4 days C.B.	13-5-42	Major L. Crawford-Brown	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	4-7-42	Pte.		A.A.Sec.15. A.W.L. from 2359 hrs 4-7-42 to 1900 hrs. 5-7-42 (absent 19 hrs. 1 min)	L/Cpl. Craig-Murphie CQMS.Marr	14 days C.B.	11-7-42	Major L.M. Crawford-Brown	Forf 1 days pay FR&I 149(1)a
Field	26-10-42	Pte.		AWL from 0830 hrs. 26 Oct.42 to 2030 hrs. 13 Nov.42.(18 dys 12 Hrs) Sec. 15(1) AA	Sgt.Munro L/Cpl.Palmer		14-11-42	Lt-col.J. Ganong	Forf 19 DP FR&I 149(1)a 10 DP FR&I 149(2)
Field	5-12-42	Pte.		AWL from 2359 hrs. 5-12-42 to 0925 hrs 7-12-42 (1 day 9 hrs 26 mins) Sec.15(1)AA	Sgt.Bennett L/Cpl.Bain		7-12-42	Lt-col.J Ganong	2 DP FR&I 149(1)a 5 DP FR&I 149(2)
Field	1-2-43	Pte.		AWL from 2359 hrs. 1 Feb. 43. to 1800 hrs. 3 Feb.43 (1 day 18 hrs 1 min) Sec.15(1)AA	Sgt.Hoggett Sgt.Taylor	5 days C.B.	4-2-43	Capt.J.C.Clarke	

D.O. Banton Major
1 Res.

I hereby certify that this is a true and exact copy.

J Connell
Capt., Adjt.
48th Highlanders of Canada.

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

E 2

Number	Rank	Name	Regiment (or unit)
B.72757	Pte.	RYLANCE, J.	48 Highrs of Canada.

1. The following is a fair and true summary of the entries in the ~~M.F.M. 6~~ Service and General Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~AIR FORCE ACT~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For A.A. Sec 15 (1)	Four	times	Five	times
For A.A. Sec 9 (3)	----	times	One	times
For A.A. Sec. 40	One	times	Four	times
For ----------		times	----------	times

Number of instances of gallantry or distinguished conduct N/L.

or,

~~There are no entries in the conduct sheets of the accused.~~ Nil.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted by Court Martial or by Civil Court.

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act Section 47 of the Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time. NOT

or,

The accused at the present time is under sentence for N/A beginning on the day of

4. The accused has been in confinement awaiting trial on the present charges, for None days in civil custody, and Four days in ~~AIR FORCE~~ military custody, making a total of Four days in custody, of which None days were spent in hospital.

5. The present age of the accused according to his record of service is ~~XXXXXXXXXXXX~~ 23 years, 22 days.

6. The date of his ~~XXXXXXX~~ attestation specified in his record of service is ~~XXXXXXXXXX~~ Sept. 6th 1939

7. The service which the accused is allowed to reckon towards discharge is N/A

8. The accused is entitled to reckon 3 yrs. 5 months, 26 days. service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in possession of or entitled to). State any air force decoration or reward. military military

N/A

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of N/A

D. K. Banton Major
Pres.

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ~~Permanent Force~~ unit

N/A dated N/A, and in his regiment (or corps), the rank of

N/A dated N/A.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

N/A Date of promotion.

In the rank of N/A years.

In the rank of N/A years.

In the rank of N/A years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under section 47 of the ~~Air Force~~ Army Act, and of cases in which trial has been dispensed with of accused, Number Rank

Name of ~~Unit~~ Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		This soldier has NOT been previously tried by Court Martial or by Civil Court.		

D. H. Banton Major
Pres.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this Sixth day of Mar 43.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

J Counsell Capt. & Adjt.
48th Highlanders of Canada.

M.F.B. 355
22M—5-41 (372-3)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

E 2

Number	Rank	Name	Regiment (or unit)
B.72767	Pte.	RYLANCE, J.	48 Highrs of Canada.

1. The following is a fair and true summary of the entries in the MFM 6 Service and General / Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For A.A. Sec 15 (1)	Four times	Five times
For A.A. Sec 9 (2)	---- times	One times
For A.A. Sec. 40	One times	Four times
For ----------	---------- times	---------- times

Number of instances of gallantry or distinguished conduct N/L.

or,

~~There are no entries in the conduct sheets of the accused.~~ G.A.B.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted by Court Martial or by Civil Court.

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act Section 47 of the Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time. NOT

or,

The accused at the present time is under sentence for N/A beginning on the day of

4. The accused has been in confinement awaiting trial on the present charges, for None days in civil custody, and Four days in military custody, making a total of Four days in custody, of which None days were spent in hospital.

5. The present age of the accused according to his record of service is 23 years, 22 days.

6. The date of his ~~enlistment~~ attestation specified in his record of service is Sept. 6th 1939

7. The service which the accused is allowed to reckon towards discharge is N/A

8. The accused is entitled to reckon 3 yrs. 5 months, 26 days. service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in military military possession of or entitled to). State any air force decoration or reward. N/A

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of N/A

D. W. Benson - Major
Pres.

NN-137
GNR RYMAL H

Correspondence to be PINNED here.

NN-137-"G"

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this 17th day of August, 1943. Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery, 3 Cdn Inf Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~and that it is not practicable for the Convening Officer to appoint Officers of Field Rank~~ B.G.

*Omit where Convening Officer is a Commanding Officer of rank of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable

~~Officers available for appointment as members of the Court~~ B.G.

~~Field Officers available for detail~~ B.G.

~~for the following reasons, namely:~~ B.G.

30 Sept 43

157

President.

Rank.	Name.	Regiment.
Major	B.F. GOSSAGE	4 Lt A A Regt RCA

Members.

Rank.	Name.	Regiment.
Capt.	J.C. DALE	13 Fd Regt RCA
Lieut	W.D. COX	14 Fd Regt RCA
Waiting Member Lieut.	W.P. HAIR	12 Fd Regt RCA

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

*Signed (P.A.S. Todd) Brigadier,
Commanding C.R.A., 3 Cdn Inf Division
Convening Officer.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B-11018 Gnr. RYMAL, H. 12 Cdn Fd Regt RCA	(1) Sec. 15 (1) A.A.	Guilty	Guilty	Confirm
	(2) Sec. 24 (2) A.A.	Guilty	Guilty	Confirm Maj
			To undergo DETENTION FOR A PERIOD of 140 days & to be put under stoppages of pay to the amount of 15 shillings to make good the value of the following articles 1 Brush clothes 1 Brush Shoe polishing 2 Suits Worsted 2 Shirts woollen	C.A.A. Sect 40 18 Aug 43 Maj
				Dated 2a Fd Regt 18 August 1943

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you ~~wish to apply for~~ an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) (P.A.S. Todd) Brigadier, *Commanding* C.R.A., 3 Cdn Inf Div. *Convening Officer (e)*

(Signed) Maj 4 LAA Regt RCA *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (If necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 16th day of August 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~) N/A
*(4. ~~The officers under instruction~~) N/A

were duly sworn.

*Omit if not applicable.

Signed this 18 day of August 1943.

Maj
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 782 M.M.L. 1929

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~) N/A

Signed this 18 day of Aug 1943.

Confirming Officer.
(P.A.S. Todd) Brigadier, C.R.A., 3 Cdn Inf Division

Promulgated and extracts taken in the case of B-11018 Gnr Rymal H

(a) (Dated) 19 Aug 43 (Signed) E J Radclyffe Capt ADJUTANT
12th Fd. Regt. R.C.A.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(220000) W.L.38330-611 60,000 12/42 A. & E. W. Ltd. Gp. 598

B2

"B2"

CHARGE SHEET

The accused No. B-11018 Gnr. RYMAL H., 12 Cdn Field Regt RCA (AF) a soldier of the Canadian Army (Overseas), being on active service is charged with:-

FIRST CHARGE
Sec 15 (1)
A.A.

Absenting himself without leave,

in that he,

In The Field, absented himself without leave from 0800 hrs 3 June 43 until 2230 hrs 14 Aug 43 (72 days 14 hrs, 30 mins)

SECOND CHARGE
Sec 24 (2)
A.A.

Losing by neglect, his equipment, clothing and regt'l necessities,

in that he,

In The Field, on 16 Aug 43 was deficient the following articles:-

1 - clothes brush
1 - brush, shoe polishing
2 - vests, woollen
2 - drawers, woollen

of which the total value of the unexpired wear is £0-15-0

Dated In The Field this
16th Day of August 1943

E. Pickering (Major)
(E PICKERING)
T/CO 12 CDN FIELD REGIMENT

To be tried by F.G.C.M.

(P.A.S. Todd) Brigadier,
C.R.A., 3 Cdn Inf Div.
17 Aug 43.

MEDICAL CERTIFICATE (K.R.(Can) 557)

H

I certify that I have this morning examined No. B11018

Gnr RYMAL, H of 12 Fd Regt, RCA and, in my opinion

he is fit ~~unfit~~ to undergo trial by Court-Martial.

Station In the Field

Date 8 Aug 43

(MEDICAL OFFICER)

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a Field General Court-Martial held at
on the 18 day of August 1943 by order of
Brig. R.A.S. Todd Commanding C.R.A. 3rd Cdn Inf Div.
dated the 17 day of August 1943

Major B. F. Gosnage 4 x AA Regt RCA, President.

Members.

~~Capt~~ Capt J. C. Dale 12 Field Regt RCA
Lt W. J. Cox 14 Fd Regt RCA
Lt W. R. Muir 12 Field Regt RCA
Waiting Member

~~Judge Advocate.~~

Trial of* B/11018 Gnr. Rymal H. 12 Can Field Regiment RCA

The order convening the Court, the charge-sheet and the summary ~~(or abstract)~~ of evidence are laid before the Court.

The Court satisfy themselves that Capt. J. C. Dale is not available to serve owing to duty & Lt. W. R. Muir

, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Lt T. E Jarvis 12 Field Regt RCA

Counsel‡ or defending officer† Lt T. J. Bell 12 Field Regt RCA

At 1410 o'clock the Trial commences.

The order convening the Court is read, and is marked "C" signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No Sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Mil. Form B. 271
10M—8-41 (3319)
H.Q. 1772-21-224

B

The President, members and ~~judge-advocate~~ are duly sworn.

~~The following officers under instruction are duly sworn.~~

Charge-Sheet

Instruction.
If the accused has elected to be tried under Army Acts, sec. 76 (8) the fact should be here recorded.

The charge sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty. *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Guilty. *Answer.*

~~Are you guilty or not guilty of the third charge against you, which~~ you have heard read? *Question.*

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which~~ you have heard read? *Question.*

Answer.

The accused having pleaded Guilty to First & second charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

CC

Proceedings on Plea of Guilty

*To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[~~The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.~~]

The accused Pte Gnr Rynal H

is found guilty of Charges one & two

*The summary (or abstract) of evidence is read, marked I, signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Yes Sir.

Answer. The accused in mitigation of punishment says:—

All the time that I was absent I kept in Touch

[~~or hands in a written statement, which is read, marked ——, signed by the President, and attached to the proceedings.~~]

with the whereabouts of the Regiment & in case of a move I wanted to be sure to be back - whatever my punishment is to be, may it be taken into Consideration so that if they do move from here into action I can be allowed to finish my punishment in Active Service

Question by President. Do you wish to say anything in the way of extenuation of your offence?

Instruction.

* If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

A. Yes Sir I have (83) days for being absent.

Q Nothing further you wish to say?

A No Sir but I do wish to go with the Regiment

DD

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

No Sir

Answer.

Evidence as to character.

E

Finding

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is cleared for the consideration of the finding.~~ NG

~~The Court find that the accused~~

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Lt. T. E Jones is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes MFR 30-5 MFM 6

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked J. and signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes.

(Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Cross-examined by the accused.

Nil

Question to the accused.

Do you wish to address the Court? *Answer.* No sir

The Court is closed for the consideration of the sentence.

F

Sentence

The Court sentence the accused Pilot Gun Pvt 17 Sentence.

To undergo Detention for 140 days

& to be put under stoppages of pay

to the amount of 18 shillings to make

good the following articles: 1 clothing & mach

1 Rough Jute Kitbag 2 pair worsted & 1 pair cotton

[illegible] Major

If accepted [illegible] Brigadier

SUMMARY OF EVIDENCE IN THE CASE OF B-11016 GNR. RYMAL, H. RHQ, 12 CDN FIELD REGIMENT R.C.A.

I

The accused is informed of his rights.

The accused does not demand and the CO does not direct that evidence be taken on oath.

FIRST WITNESS FOR THE PROSECUTION

A 35255 Cpl Perry W.R., RCASC (att 12 Cdn Fd Regt RCA)

"On Monday 5 June 43 I returned from a pass and took charge of the Men's Kitchen. As a result of what Cpl Johnson informed me, I reported to RSM Clayton that Gnr. Rymal had been absent without leave from 0800 hrs 3 June 43. I did not see Gnr. Rymal again after that time until to-day 16 Aug 43. I was NCO i/c Men's Kitchen, where his job was assistant cook; aside from his afternoons off and his shifts off duty he was supposed to be in the kitchen, but he was not there during this period.

The accused declines to cross-examine.

W R Perry

.....

SECOND WITNESS FOR THE PROSECUTION

A-35235 Sgt. Lautenschlager E.J., 12 Cdn Fd Regt R.C.A. states:-

"On the night of 14 Aug 43 as Duty Sergeant, Gnr. Rymal reported in to me from AWL at 2230 hrs. I placed him under close arrest and sent for the Regt'l Police to take him to the guard room"

The accused declines to cross-examine.

Sgt Lautenschlager E.J.

.....

THIRD WITNESS FOR THE PROSECUTION

B-89159 Gnr. Marriner L.F., 12 Cdn Fd Regt RCA states:-

"I am storeman, Regt'l Q.M. Stores 12 Cdn Fd Regt RCA. I checked the kit of Gnr. Rymal at the stores to-day 16 Aug 43. He was deficient the

....cont'd ...

SUMMARY OF EVIDENCE IN THE CASE OF B-11018 GNR. RYMAL H. RHQ 12 CDN FIELD REGIMENT

THIRD WITNESS - cont'd

the following articles:-

One clothes brush	- Value	-	0-1-1
One brush, shoe polishing	"	-	0-0-9½
Two vests woollen @-5/1	"	-	0-10-2
Two drawers woollen @-5/3	"	-	0-10-6
The total value of these articles is			£1-2-6½

The accused declines to cross-examine.

.....

The accused having been duly cautioned in accordance with R.P. 4 E says:-

"I do not wish to make any statement"

The accused does not wish to call witness in his defence at this time.

Certified that R.P.4 complied with,
In The Field
16 Aug 43

.....(Capt.)
(S.A. GILLIES)
12 CDN FIELD REGIMENT R.C.A.

M.F.M. 6 J1
(A.F. B.1271)
40/P & /8136 (2

No. B1101 Name RYMAL H.E. Sqn., Battery, or Company Corps R.C.A. Date of enlistment 3-6-40 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing stop with trial	By whom awarded	Remarks
Sussex	10-40	Gnr.		AWL from 1900 hrs 1-10-40 to 1730 hrs 5-10-40 (3 days 22 hrs 30 min)	Sgt. Matteson	7 dys pay 7 dys C.B.	8-10-40	Lt-Col. Inch	4 dy pay FR&I
Sussex	18-8-41	Gnr.		AWL 5 (dys 22 hrs)	Sgt. Ferrand	Reverted to rank of gnr	24-8-41	GT Inch	6 dye pay FR&I
Sussex	30-5-41	Gnr.		AWL from 2200 hrs 30-5-41 to 2330 hrs 30-5-41 (1 hr 30 mins)	L/Sgt. Spence	3 dys CB	2-6-41	Major Bigger	
Sussex	1-6-41	Gnr.		Improperly in possession of $21.00 the property of Gnr. Atwell	Gnr. Atwell	14 dys Det.	2-6-41	C.I Inch	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sussex	30-6-41	Gnr.		AWL 3 days 6 hrs 45 mins	L/Bdr.Ford	10 dys pay	5-7-41	OC Inch	
Sennybridge	26-8-41	Gnr.		Conduct to the prejudice	L/Bdr Cook	7 dys C.B.	28-8-41	Major Brigger	
Leipzig Bks	21-9-41	Gnr.		AWL 2 days Failing to appear	Bdr.Whitlock	3 C.B.	23-9-41	Major Brigger	
Field	11-11-41	Gnr.		AWL 30 mins	L/Bdr Ford	3 C.B.	12-11-41	Major Brigger	
Field	13-6-42	Gnr.		AWL 1 day 18 hrs.	TSM Ayers	7 dys F.P.	15-6-42	L.O. Clark Lt-Col.	
Field	30-7-42	Gnr.	(1)	AWL 17 hrs 30 mins)	L/Sgt. Samuels BSM Snider				
				(2) Conduct to the prejudice					
				(2) AWL 3 days 23 hrs 35 mins)		14 dys FP	7-7-42	Lt.C.I Clark fts 4 dys pay FWI	

M.F.M. 6
(A.F. B.122)
40/P.A./3150 (2005)

No. B-11018 Name RYMAL H. Sqn., Battery, or Company Corps RCA Date of enlistment G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	22-1-43	Gnr.		AWL 6 days 2 hrs	Sgt. Shaw	28 dys FP	23-1-43	Pain	Forfts 7 dys pay

Certified true copy of original.

.....(Capt.)
(S.A. GILLIES)
12 Can Field Regiment R C A

(PTO)

M.F.B. 355
22M—5-41 (3240)
H.Q. 1272-21-9
A.F.B. 464

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B11018	Gnr.	RYMAL R.	12 Can Fd Regt RCA

1. The following is a fair and true summary of the entries in the Service and Regimental
Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, Air Force Act
of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For A.W.L.	No times	nine times
For Improper possession of money	No times	one times
For Conduct to the prej.	No times	twice times
For Failing to appear	No times	one times

Number of instances of gallantry or distinguished conduct Nil

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act
Section 47 of the Army Act and dispositions without trial under A.A. 71(3) are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or

The accused at the present time is under sentence for beginning on the
days.

4. The accused has been in confinement awaiting trial on the present charges, for 0 days in civil custody, and four days in military Air Force custody, making a total of 4 days in custody, of which No days were spent in hospital.

5. The present age of the accused according to his record of service is attestation paper is 36 years

6. The date of his enrolment specified in his report on attestation attestation paper is 3 June 40

7. The service which the accused is allowed to reckon towards discharge

8. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (military military
possession of or entitled to). State any air force decoration or reward. N/A
military

10. If the accused is a warrant officer.) The accused before he was made a warrant officer held Air Force
the regimental rank of

11. (In the case of an officer) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

dated , and in this regiment (or corps) the rank of

dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion

In the rank of years

In the rank of years

In the rank of years

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary convictions under Section 41 of the Army Act, and of cases in which trial has been dispensed with, of accused Number Rank Unit Regiment Name

NOTE.—A certified extract from the regimental books stating these convictions and dispensations with trial must be annexed.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
	N/A			
	N/A			
	N/A			
	N/A			
	N/A			
	N/A			
	N/A			
	N/A			
	N/A			
	N/A			
	N/A			
	N/A			

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 18th day of August 1943

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

E. Pickering (Major)

(E PICKERING)

T/CO 12 CDN FIELD REGIMENT

4P-98

Ste. Rynard N.B.

RECORDED AT CMHQ IN AB 160 4P. 98

FIELD GENERAL COURT-MARTIAL

Convened by Order of Major Gen H.K. Bums. Comd 4th Sec 4 HQ dated 17/12/44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D 141944	Pte	Hugh Cameron	Ryan	4 Sec Coy RCASC

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium. on (date(s)) 20 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr,~~ if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order) CF A95, for oaths and instrs on how to record addresses, evidence, etc. which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused:~~ Do you object to ..... as interpreter ? Ans

~~The Interpreter is sworn.~~(1) ~~Do you object to~~ ..... ~~as shorthand writer ? Ans~~

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans N.O.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major G.L. Macdonald	CAC 9 CBRB.
Member	Capt S. Roy	CAC 11 CBRB.
Member	Lieut E. Bullet	CAC 10 CBRB.
Judge-Advocate		
Prosecutor	Lieut J.H. Connors	RCAMC - 4th Sec Canadian Troops
Defending Offr	Lieut P. Lafond	CAC 10 CBRB.

Questions by President: Is the Prosecutor a lawyer ? Ans N.O. Is the Defending Offr a lawyer ? Ans N.O.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 61 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 3. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form .....

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: .....

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	41	guilty	guilty	
2nd	42	guilty	guilty	
3rd	11	guilty	guilty	
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 58, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of s/t see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) .....(1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Six (6) months detention.

(Sgd) ..... 20 Jan 45 (Sgd) G.L. Macdonald Maj
Judge-Advocate, if any. Date awarded. President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirm

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) Elect

(1. AA 57A. Delete if not used.)

(Sgd) E. Bullet Maj Gen

Date ..... Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D 141944 Pte RYAN H.C.	26 Jan 45	A.N. Bain Maj

Promulgated CR 69 dated 26 Jan 45, 2 Commds plus Con Sec 1 2 4 HQ 2 A Gp.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

I certify that there are no ill effects or irregularities to justify withholding confirmation of these proceedings.

DJAG Sec. 6 Dft 1 - 8 MAR 45 Sgd

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP 37(A).*)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and willdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 8 ; and responsibility of JA or Pres to record proceedings see RP 91, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ~~No~~ .....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ~~C~~ , initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address (1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(C). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans ~~Use the accused gives evidence~~
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces ~~Statement(s) as to Character and Particulars of Service~~(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(*1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the ~~Statement(s) and~~ Conduct Sheet(s), and in mitigation of punishment ?(1) Ans ~~No~~ .....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(3), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused, No D-141949 Pte Hugh Cameron RYNARD, North Nova Scotia Highlanders, att Cdn Sec HQ Brussels Garrison, a soldier of the Cdn Army Overseas, is charged with

FIRST CHARGE
SEC 41
ARMY ACT

WOAS committing a civil offence, that is to say, common assault

in that he

in BRUSSELS at approx 2245 hrs 17 DEC 44 in the Cafe au Ballon, 108 Blvd Anspach, Brussels, assaulted Mr. Pierre Hubert REYNARD, manager of the cafe, by striking him on the right hand with a pistol, thus fracturing the 5th metacarpal bone in the hand.

SECOND CHARGE
SEC 40
ARMY ACT

WOAS conduct to the prejudice of good order and military discipline

in that he

in BRUSSELS at approx 2245 hrs 17 DEC 44 in the Cafe au Ballon, 108 Blvd Anspach, Brussels, caused a disturbance by waving a pistol.

THIRD CHARGE
SEC 19
ARMY ACT

WOAS drunkenness

in that he

in BRUSSELS at approx 2245 hrs 17 DEC 44 in the Cafe au Ballon, 108 Blvd Anspach, Brussels, was drunk.

In the Field
15 Jan 45

(L. P. FAYAN) Lt-Col
Commanding Officer
Cdn Sec HQ Brussels Grn

To be Tried by Field General Court Martial.

In the Field
17 Jan 45

(E.L.M.Burns) Major-General
GO i/c
Cdn Sec 1 Ech HQ 21 A Gp.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
D-141949	Pte	Hugh Cameron	RYNARD	North Nova Scotia Highrs att Cdn Sec HQ Brussels Garrison

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~have~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 17 Jan 45 endorsed by me, (~~A.A.A.G.~~ ~~D.A.A.G.~~ by staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [~~and that it is not practicable that the trial be held by a superior Field Court~~]

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three offrs to form the Court, (b) a Fd Offr as President for the reason I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate the offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	G.L. MacDougall	X4 List CAC 9 CBR Bn

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Capt or Lieut	(to be detailed by OC 11 CBR Bn)	
A Capt or Lieut	(to be detailed by OC 10 CBR Bn)	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
A Capt or Lieut	(to be detailed by OC 10 CBR Bn)	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Belgium (Country.)

Dat 17 Jan 45

E.L.M. Burns (Signed personally. RP 105 fn 2.)

(E.L.M. Burns)

Maj-Gen (Rank.)

Commanding Cdn Sec 1 Ech HQ 21 A Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for aoths and notes for use on trial.)

4/38A CFA 95 (In lieu of AFA 3) 40 P & S/1597 (6143)

Approved:

DJA

MEDICAL OFFICER'S CERTIFICATE

I certify that No. A-141964 Pte RYNARD, MC ..... Regiment

is fit to undergo trial by Court-Martial.

Date 20 January 1945

..... Capt.
Signature of the MO

Hôpital Saint-Pierre
322, r. Haute, BRUXELLES

Sint-Pieters Hospitaal
BRUSSEL, 322, Hoogstraat

Clinique chirurgicale du
Heelkundige Kliniek van

Prof R. DANIS

Consultations tous les jours de 8 à 9 heures du matin.

Raadplegingen alle dagen, van 8 tot 9 uur 's morgens.

Reynard, Hubert
104 Bd Anspach, Bruxelles -
fracture ler 5e métacarpien
de la main droite - plâtre à
garder cinq semaines -
Impotence fonctionnelle totale
temporaire de la main et de
l'avant-bras droits.
22.1.45
Jean Sonnenfeld

This Exhibit A refers to
in the case of [illegible]
taken before me
this 26th day of January 1944.

2-U-CAPS-405

Case of:

Army, Accused: 2-141 gr of the Hugh Cameron Regiment, [illegible] North Nova Scotia Highlanders, And Other Lic N.C. Prisoners of War.

duly sworn states:

Q1 What happened on the 17 Dec 44.

A1 On the 17 Dec 44 I came in on leave from Nijmegen to town on leave from Nijmegen to Brussels & there were no rooms at the Maple Leaf etc so I came home & they were arranged Irish pay home & by the time I got settled it was too late so I went to bed. We had something to eat & went out & had something to drink & then we went to the cafe & had something to drink while we were at the cafe I purchased the pistol M.C. H.S. army issue from an American soldier & purchased the pistol because we are not allowed to carry German weapons I only carry German weapons I only carry kind. We was broke I had quite a bit of money at the time. We drank quite a bit more & I don't remember anything more until I remember nothing. I never drank like that before because I for the thing never had been drunk before but I never had the occasion to get into trouble before.

Question by the Court

Q2 How old are you?

A2 20 sir, I have been in the army 2 months now & since September I have been in Europe. I always done being with my company since that time & I am a Lieutenant sir I have been with Cameron sir I helped I also in Nijmegen there with my section since November. We got to bed is my first time I had. We were I was a man from Nijmegen I was up to see & I will say the same as I am 26 yrs old.

Q3 What he is about 26 yrs old. Before the war I was working at the inspection board at C.I.L.

QA 83 (3) Complied with.

1)

47 C

SUMMARY OF EVIDENCE

Summary of Evidence in the case of NO: D141949 Pte RYNARD, Hugh, Cameron. North Nova Scotia Highlanders attached Canadian Section NS Brussels Garrison, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on oath.

First Witness: Mr Pierre Eubert REYNARD (Cafe Manager) 108 Blvd ANSPACH, BRUSSELS being unable to speak English requires an interpretor.

Interpretor (French-English) D21226 L/Cpl LEGAULT, A 2 Cdn L of C Provost Coy sworn.

Witness having been duly sworn states as follows:

"On SUNDAY 17 DECEMBER 1944 at approximately 2245 hrs at my Cafe AU BALLON, 108 ANSPACH, BRUSSELS two soldiers entered. This soldier I see here now wasone of them. They asked for some thing to drink and they were after the waitress for quicker service, and that is how the trouble started. The waitress told them that she needed a bit of time, so this man pulled a pistol and waved it around saying "I want quick service." This happened at the bar. Then they both went over to the tables and started arguing with some British soldiers. The English soldiers didn't want to fight so the accused's comrade grabbed a chair throwing it on the floor and breaking it. He was drunk. This man calmed down then and I went to my other duties. A short while after I saw the accused and his friend on the terrace and they were arguing with other soldiers. It was 1100 PM so I rang the bell signalling the Cafe was closed. At this moment I saw the accused with his pistol in his hand waving it around. The other soldier (his friend) had a chair in his hand with which he hit more than one English soldier. At this time I approached them saying "It is now 11:00 o'clock and you will please leave now." The other soldier grabbed another chair, broke it on a table, also breaking some glasses which were on that table. Being afraid of more trouble I tried to get them out of the Cafe, assisted by four or five other soldiers, we put them out on the street. At this time the accused had me by the coat with one hand and with his other hand drew his pistol and holding it by the barrel, hit my on my right hand - fracturing my 5th metacarpal bone. I left then and the last thing I saw was the accused's pistol falling to the street, having been knocked from his hand by a civilian. Here is the Medical Certificate which I received from the hospital after they examined my hand, (Marked Exhibit "A"). In my opinion the accused was drunk. I wish to withdraw my complaints. I feel that the accused had no intention of harming me or anyone else and also that he has seen considerable fighting and is worthy of this consideration.

Accused declines to cross-examine.

2)

Second Witness: Mr Robert HUSTIN (decorator) 242 Ave BRUGMANN, BRUSSELS being unable to speak English requires an interpretor.

Interpretor (French-English) D21226 L/Cpl LEGAULT, A 2 Cdn L of C Provost Coy is sworn.

Witness having been duly sworn states:

"On I think SUNDAY, 17 DECEMBER 1944 at approximately 1100 PM I was on the street in fro t of the Cafe Au BALLON. I saw the manager, Mr REYNARD and this soldier - whom I recognize This soldier was waving a pistol around. I approached the accused and twisted his arm until he tropped the pistol. He hada knife in his belt which I removed for safety, although he had not tried to use it. I gave the knife and pistol to the Belgian Police. In my opinion the accused was drunk.

Accused declines to cross-examine this witness.

Knife and pistol not available for identification by the Witness.

Third Witness: Mr RANSKIN, Officer of the Belgian Police, BRUSSELS.

In my opinion the attendance of the above witness at this Summary of Evidence is impossible at the present time, but he will be available to give evidence on a Court Martial.

H H House Capt

(H H HOUSE) CAPT
Officer taking Summary.

Certified correct translation of abstract from Records of Belgian Civil Police attached herewith, marked Exhibit "C".

H H House Capt

(H H HOUSE) CAPT
Officer taking Summary.

3)

Fourth Witness: having been duly sworn states as follows:

"I am 768923 Cpl JOHNSON, H., of 120 Provost Coy, Corps of Military Police, On the 17 DEC 44 I was called out to the Town Hall in the Grand Place, BRUSSELS. On arrival I saw the accused, whom I recognize, with another soldier. They had been drinking. The accused was semi-conscious and laid out on the floor. He was drunk. With the help of the Civil Police and the truck driver I carried him out and laid him in the truck. I then placed him under arrest to be detained. The accused caused no trouble. I returned to the Police Station (Civil) after placing the accused in the truck and the Police Inspector showed me a gun and knife. I collected the gun and knife and asked the other Canadian soldier, who had been drinking and was not drunk, to come with me to the vehicle which he did. When we got outside he became very violent, he tried to get theCivil Police Inspector by the throat. I tried to restrain him and he took a kick at me. The gun and knife was placed in the truck after a violent struggle which I had with the other prisoner. I handcuffed him with the help of the Civil Police. I brought both prisoners to Prince Albert Barracks. Exhibit "B" is a knife similar to the one received from the Belgian Police but I did not see the scabbard before this. I cannot say that his is the same knife. I do not know what happened to the gun after I placed it in the truck.

The accused declines to cross-examine this witness.

4)

The accused was cautioned as follows:

"Do you wish to make any Statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

I do not wish to make a Statement or give evidence. I reserve my Defence.

(H H HOUSE) CAPT
Officer taking Summary.

I certify that the foregoing Summary of Evidence consisting of five pages was taken down by me in the presence of the accused and that RP 4 (c) (d) (e) and (f) have been complied with.

In the Field
10 JAN 45

(H H HOUSE) CAPT
10 C B R Bn.

Request for Defending Officer

I request that an officer be appointed for my defence.

List of Witnesses for the Prosecution

Mr Pierre Hubert REYNARD 108 Blvd ANSPACH, BRUSSELS /Cafe Au BALLON
Mr Robert HUSTIN 242 Ave BRUGMANN, BRUSSELS
Mr Ranskin Belgian Police Officer Town Hall, BRUSSELS
769623 Cpl JOHNSON H, 120 Provost Coy CMP

List of Witnesses for the Defence

NIL

List of Exhibits

Exhibit "A" - Medical Certificate
Exhibit "B" - Knife and Sheath
Exhibit "C" - Certified correct translation of Belgian civil Police Record.

In the Field
10 JAN 1945

(H H HOUSE) CAPT
10 C B R Bn.

4

Summary of Evidence

Witness having been duly sworn
states as follows:

Direct examination by Capt. Howard

Q. Will you please state your name, rank and organization?

A. Pierre Hubert Reynard, Captain, 105th Engineers.

Q. Captain, were you in command of Company D, 105th Engineers, on the night of October 4th, 1944?

A. I was.

Q. Will you please state briefly what happened that night?

A. I was sleeping in my tent when I was awakened by a shot. I ran out of my tent and saw a man running away. I called to him to halt, but he did not halt. I fired my pistol at him. I then ran to the tent of Lieutenant Conway and told him that I had shot a man. I then returned to my tent and went to bed.

Q. Did you see the man you shot at?

A. I did not.

Q. Did you see anyone else?

A. I did not.

Q. Did you hear anything else?

A. I did not.

Q. Did you see Lieutenant Conway?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 4th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 5th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 6th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 7th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 8th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 9th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 10th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 11th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 12th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 13th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 14th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 15th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 16th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 17th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 18th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 19th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 20th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 21st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 22nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 23rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 24th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 25th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 26th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 27th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 28th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 29th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 30th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 31st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 1st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 2nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 3rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 4th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 5th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 6th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 7th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 8th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 9th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 10th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 11th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 12th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 13th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 14th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 15th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 16th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 17th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 18th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 19th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 20th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 21st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 22nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 23rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 24th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 25th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 26th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 27th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 28th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 29th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 30th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 1st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 2nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 3rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 4th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 5th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 6th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 7th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 8th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 9th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 10th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 11th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 12th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 13th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 14th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 15th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 16th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 17th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 18th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 19th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 20th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 21st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 22nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 23rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 24th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 25th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 26th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 27th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 28th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 29th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 30th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 31st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 1st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 2nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 3rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 4th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 5th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 6th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 7th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 8th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 9th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 10th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 11th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 12th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 13th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 14th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 15th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 16th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 17th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 18th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 19th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 20th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 21st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 22nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 23rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 24th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 25th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 26th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 27th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 28th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 29th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 30th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 31st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of February 1st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of February 2nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of February 3rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of February 4th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of February 5th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of February 6th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of February 7th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of February 8th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of February 9th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of February 10th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of February 11th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of February 12th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of February 13th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of February 14th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of February 15th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of February 16th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of February 17th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of February 18th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of February 19th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of February 20th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of February 21st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of February 22nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of February 23rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of February 24th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of February 25th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of February 26th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of February 27th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of February 28th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of February 29th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 1st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 2nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 3rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 4th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 5th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 6th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 7th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 8th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 9th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 10th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 11th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 12th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 13th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 14th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 15th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 16th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 17th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 18th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 19th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 20th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 21st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 22nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 23rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 24th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 25th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 26th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 27th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 28th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 29th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 30th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of March 31st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 1st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 2nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 3rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 4th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 5th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 6th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 7th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 8th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 9th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 10th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 11th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 12th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 13th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 14th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 15th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 16th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 17th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 18th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 19th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 20th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 21st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 22nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 23rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 24th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 25th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 26th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 27th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 28th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 29th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of April 30th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 1st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 2nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 3rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 4th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 5th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 6th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 7th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 8th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 9th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 10th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 11th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 12th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 13th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 14th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 15th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 16th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 17th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 18th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 19th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 20th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 21st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 22nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 23rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 24th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 25th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 26th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 27th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 28th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 29th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 30th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of May 31st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 1st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 2nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 3rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 4th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 5th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 6th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 7th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 8th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 9th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 10th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 11th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 12th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 13th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 14th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 15th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 16th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 17th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 18th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 19th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 20th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 21st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 22nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 23rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 24th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 25th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 26th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 27th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 28th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 29th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of June 30th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 1st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 2nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 3rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 4th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 5th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 6th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 7th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 8th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 9th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 10th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 11th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 12th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 13th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 14th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 15th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 16th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 17th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 18th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 19th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 20th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 21st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 22nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 23rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 24th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 25th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 26th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 27th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 28th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 29th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 30th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of July 31st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 1st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 2nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 3rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 4th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 5th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 6th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 7th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 8th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 9th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 10th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 11th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 12th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 13th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 14th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 15th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 16th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 17th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 18th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 19th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 20th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 21st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 22nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 23rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 24th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 25th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 26th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 27th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 28th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 29th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 30th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of August 31st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 1st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 2nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 3rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 4th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 5th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 6th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 7th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 8th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 9th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 10th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 11th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 12th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 13th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 14th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 15th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 16th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 17th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 18th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 19th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 20th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 21st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 22nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 23rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 24th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 25th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 26th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 27th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 28th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 29th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of September 30th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 1st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 2nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 3rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 4th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 5th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 6th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 7th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 8th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 9th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 10th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 11th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 12th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 13th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 14th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 15th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 16th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 17th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 18th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 19th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 20th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 21st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 22nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 23rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 24th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 25th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 26th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 27th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 28th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 29th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 30th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of October 31st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 1st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 2nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 3rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 4th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 5th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 6th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 7th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 8th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 9th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 10th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 11th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 12th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 13th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 14th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 15th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 16th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 17th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 18th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 19th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 20th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 21st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 22nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 23rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 24th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 25th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 26th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 27th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 28th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 29th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of November 30th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 1st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 2nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 3rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 4th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 5th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 6th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 7th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 8th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 9th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 10th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 11th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 12th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 13th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 14th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 15th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 16th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 17th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 18th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 19th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 20th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 21st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 22nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 23rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 24th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 25th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 26th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 27th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 28th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 29th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 30th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of December 31st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 1st?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 2nd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 3rd?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 4th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 5th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 6th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 7th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 8th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 9th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 10th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 11th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 12th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 13th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 14th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 15th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 16th?

A. I did not.

Q. Did you see Lieutenant Conway on the night of January 17th?

A. I did not.

Q. Did you see

soldiers. I don't want a fight as the accused comrade grabbed a chair crowning him on the head and breaking it. He was stunned. This man carried down stairs and went to my office where I saw the accused and his under the influence of drink arguing with some soldiers. It was 100 pm as I am in the habit of regulating the cafe was closed. At this moment I saw the accused with his pistol in his hand and waving it around. The other soldier (his friend) took a chair in his hand with which he hit more than one drunken soldier. At this time I approached them saying "it is now 11 o'clock and you will please leave now." The other soldier grabbed another chair, broke it on a table, also breaking some glasses which were on the table. Being afraid of more trouble I went to get them out of the cafe, assisted by four of the other soldiers. We put them out on the street. At this time the accused had me by the coat with one hand and with his other hand drew his pistol and holding it by the barrel, hit me on my right hand fracturing my 3rd metacarpal bone. I left them and the last thing I saw was the accused's pistol falling to the street, having been knocked from his hand by a civilian. He is the medical certificate which I received from the hospital after they examined my hand.

Marked Exhibit A

In my opinion the accused was drunk and I do not know my comments. I put that the accused had no intention of harming me or anyone else and that he was in no condition to realize what he was doing.

I have read the above statement and this is correct.

Witness

Witness: Mr Robert Austin (decorator) 242 Rue Brugmann Brussels being unable to speak English requested interpreter (French English) 121226 4/6al Lequeux A 26 da Lof 6 Provost is sworn

Witness having been duly sworn states On Friday 15 Dec 1944 at approx 100 pm I was in the street in front of the Cafe du Lion. I saw the manager Mr Reynard and two soldiers whom I recognize. This soldier was waving a pistol around. I approached the accused and insisted he disarm. What he dropped the pistol. He raised it as if to strike me, I moved for safety although he did not intend to use it. I gave the knife and pistol to the Belgian police. In my opinion the accused was drunk. The accused declines to cross examine this witness.

(Signed) Lequeux Interpreter

I thought would present to Court Martial. Exhibit B is a confidential report received from the Belgian authorities which I cannot say that I am sorry to. I do not know what happened to the gun apparently in the dark

Prisoner declining to cross-examine
X H. Johnson Cpl. witness.

2 Witness - Mr. RANSKIN. Chief of Belgian Police - Brussels.
In my opinion the attendance of the above witness at this Summary of Evidence is unreasonable at the present time, and it will be necessary for him to attend on the Court Martial

Certified correct transcription of evidence given by witnesses. Handed to the

The accused was cautioned as follows:—
"Do you wish to make any statement or to call witness on your behalf? You are not obliged to say anything unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

You not wish to make a statement or give evidence. Reserve my defence

H. C. Rynard
A/Lieut Capt.
taking summary

I am very glad to forward a summary of evidence, consisting of [illegible] pages and taken down by me in the presence of the accused and of [illegible] and in the presence of each other.

Sarche Field
10 Jan 1945

[illegible] Capt
O C B R Sec.

I [illegible] appointed prosecutor and [illegible] appointed for my defence.

H. C. Rygard

List of witnesses for the Prosecution
Maj Robert Rygard 108 Bde Prisoner of War Camp
Emanuela
Lt Col Robert Austin 2/2 Aust. Engineer Camp
Maj Ranston, Belgian Relief Officer
Town Hall Emanuela
[illegible] Corporal Hawkins H. 120 Bde Prisoner of War Camp
Private Abd Barrois Emanuela
[illegible] witnesses for the defence
NIL

List of Exhibits
Exhibit 1 Medical Certificate
Exhibit 2 Signed statement
Exhibit 3 Original statement taken by [illegible] and signed by accused

Sarche Field
10 Jan 1945

H. Hawkins Capt
O C B R Sec

M.F.M. 6
(A.F.B. 122)
40/P.& R./136 (3637)

No. D141949 Name RYNARD H C | Sqn., Battery, or Company | Corps CND INF CORPS | Date of enlistment 9 AUG 43 | G.C. Badges N/A | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra line N/A | Sheet No. 1 | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing with trial	By whom awarded	Remarks
In the FIELD	16 SEP 44	Pte		AWL from 0745 hrs 16 SEP 44 to 1320 hrs 19 SEP 44 (Absent 3 days 5 hrs 35 min)		7 days CB	19 SEP 44		Forfs 1 days pay FR & I 149(1)(a)

"CERTIFIED TO BE A TRUE EXTRACT FROM THE REGIMENTAL BOOKS AND DOCUMENTS IN MY CUSTODY"

G E Marin

(G E Marin) Lieutenant
Officer IC - RECORDS "B"
9 JAN 45 Cdn Sec GHQ 2nd Echelon, 21 A Gp

(P.T.O.)

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st 41	Guilty	Guilty	
2nd 40	Guilty	Guilty	
3rd 19	Guilty	Guilty	
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 36, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn b.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1)
(1. See RP 46(A), fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo six (6) months detention

(Sgd) ..... 20 Jan 45 (Sgd) G.L. MacDougall Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

CONFIRM

xxxx

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 743 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-86; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pros to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President of the Court GLM complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No .(5)
(1. *RP 27(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~Xxx cxx xxxxx xxxxx xxxxx xxxxxxx xxxxxxxx xxxxxxx xxxxxxx x

NDI41949 Name RYNARD H C | Sqn. Battery or Company | Corps CDN INF CORPS | Date of enlistment 9 Aug 43 | OC Badges N/A | Service or Proficiency Pay Ex D GLM | MFM 6 (AFB 122) 40/PAD/130 (3438)

Company Conduct Sheet Date of last entry in N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	16 Sep44	Pte		AWL from 0745 hrs 16 Sep 44 to 1320 hrs 19 Sep 44 (Absent 3 days 5 hrs 35 mins)		7 days CB	19 Sep 44		Forf 1 days pay PR&I 149(1)(a)

"CERTIFIED TO BE A TRUE EXTRACT FROM THE REGIMENTAL BOOKS AND DOCUMENTS IN MY CUSTODY"

(Sgd) G.E. Marin Lieutenant
Officer IC - Records "B"
9 Jan 45. Cdn Sec GHQ 2nd Echelon, 21 A Gp

PTO

GLM

C H A R G E S H E E T

The Accused, No D-141949 Pte Hugh Cameron RYNARD, North Nova Scotia Highlanders, att Cdn Sec HQ Brussels Garrison, a soldier of the Cdn Army Overseas, is charged with

FIRST CHARGE
SEC 41
ARMY ACT

WOAS committing a civil offence, that is to say, common assault

in that he

in BRUSSELS at apprx 2245 hrs 17 DEC 44 in the Cafe au Ballon, 108 Blvd Anspach, Brussels, assaulted Mr. Pierre Hubert REYNARD, manager of the cafe, by striking him on the right hand with a pistol, thus fracturing the 5th metacarpal bone in the hand.

SECOND CHARGE
SEC 40
ARMY ACT

WOAS conduct to the prejudice of good order and military discipline

in that he

in BRUSSELS at apprx 2245 hrs 17 DEC 44 in the Cafe au Ballon, 108 Blvd Anspach, Brussels, caused a disturbance by waving a pistol.

THIRD CHARGE
SEC 19
ARMY ACT

WOAS drunkenness

in that he

in BRUSSELS at apprx 2245 hrs 17 DEC 44 in the Cafe au Ballon, 108 Blvd Anspach, Brussels, was drunk.

In the Field
15 Jan 45

(Sgd) L.P. Payan Lt-Col
Commanding Officer
Cdn Sec HQ Brussels Grn

To be tried by Field General Court Martial.

In the Field
17 Jan 45

(Sgd) E.L.M. Burns Major-General
GO i/c
Cdn Sec 1 Ech HQ 21 A Gp.

GLM

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-141949	Pte		Hugh Cameron	RYNARD	North Nova Scotia Highrs att Cdn Sec HQ Brussels Garrison

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has committed the offence(s) set forth in the Charge Sheet attached and on (date) 17 Jan 45 endorsed by me "To be tried by Field General Court-Martial". KLMB

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; KLMB

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. KLMB

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. KLMB

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	G.L. MacDougall	X4 List CAC 9 CBR Bn	

MEMBERS.

A Capt or Lieut (to be detailed by OC 11 CBR Bn)

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
A Capt or Lieut	(to be detailed by OC 10 CBR Bn)		

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
A Capt or Lieut	(to be detailed by OC 10 CBR Bn)		

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Belgium (Country.) (Sgd) E.L.M. Burns (Signed personally. See 105 fn 2.) Maj-Gen (Rank.)

Dat 17 Jan 45 Commanding Cdn Sec 1 Ech HQ 21 A Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 38 (In lieu of AFA 3) 40/F & S/1697 (6143)

(See overleaf for oaths and notes for use on trial.)

Approved:

Major

DJA

LGM

MEDICAL OFFICER'S CERTIFICATE

I certify that No A141964 Pte RYNARD, M.C. Regiment

is fit to undergo trial by Court-Martial.

Date 20 January 1945 (Sgd) C.P. Cion Capt
Signature of the MO

HOSPITAL SAINT-PIERRE

122, T. Haute, BRUXELLES

SINT-PIETER HOSPITAAL GLM

BRUSSEL, 322, Hoogstraat

Clinique Chirurgicale du)
Heelkundige Kliniek van) Prof R. DANIS

Consultations tous les jours
de 8 a 9 heures du matin

Raadplegingen alle dagen
van 8 tot 9 uur's morgens

KEYNARD, HUBERT

108 Bd Anspach, Bruxelles -

fracture in is initercorpin
de la moin moite - platre a
yarder cing vemoina -
impobence fouctiounelle rotyle
temporoire de la moin at je
l'ovaouit - bar Moits
22.12.44

(Sgd)??????????????

This is Exhibit "A" referred to in the case of D.141949 Pte Rynard H.C. taken before me this 9 day of January 1944.

(Sgd) H.H. HOUSE Capt

Case of:
I am accused: D141949 Pte Hugh Cameron Rynard North Nova Scotia Highlanders att Cdn Sec HQ Brussels Grn.
duly sworn states:

Q.1 What happened on the 17 Dec 44.

A.1. On the 17 Dec 44 I came in to town on leave from Nijmegen to Brussels and there was no rooms at the Maple Leaf Club so billets were arraigned with civilians and by the time I got settled it was 1700 hrs.
We had something to eat and went into a cafe and had something to drink. While we were in the cafe, I bought a pistol No 45 Army issue from an American soldier. I purchased the pistol because we are not allowed to carry German weapons of any kind. He was broke and I had quite a bit of money at the time. We drank quite a bit more and I don't remember anything more until the next morning. I never drank the "Rhum" Issue because I don't like it. I had been drunk before but I never had the occasion to get into trouble before.

Question by the "Court"

Q.2 How old are you?

A.2 20 sir, and I have been in the army 18 months now and since September I have been in Europe, and I always have been with my unit since that time and I am a rifleman in a platoon sir, I have been with them in Scheldt and also in Nijmegen with my section since November. This is my first leave I had. The man I was with is a man from the same Coy as I am and would say that he is about 26 yrs old.

Q.3 Before the war I was working at the inspection board at C.I.L.

AA 83 (B) complied with.

Mr PRESIDENT

On this present case we have a soldier who has been a poor victim of circumstances and facts which he had no intentions to do at all. Pte Rynard was on leave in Brussels he met a friend and had many drinks; so, in this state, a friend who, according to the summary of evidence, was almost sober and took him to this cafe where the incident occured a thing which could have been prevented. I do understand that drunkenness is no an excuse, but we can deduce that if the soldier had never the intention or premeditation of such an action.
Rynard caused a disturbance in this cafe but there has friend made in a way as much trouble as he did, a thing which we must consider because the other soldier got away without a charge. I do understand that it is a serious offence to wave a pistol in a public place, but according to the summary of evidence, the pistol was not loaded and I don't see any mention that the accused had bullets in his pockets, for this reason, we should think that the accused didn't put anybody in danger or in a "tough spot".
And I must bring up this point, the cafe manager Mr. Pierre Hubert Reynard stated that he wishes to withdraw my complaints. I feel that the accused had no intention of harming me or anyone else and also that he has seen considerable fighting and is worthy of this consideration

Ex C LGM

SUMMARY OF EVIDENCE

Summary of Evidence in the case of NO: D141949 Pte RYNARD, Hugh, Cameron. North Nova Scotia Highlanders attached Canadian Section HQ Brussels Garrison, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on oath.

First Witness: Mr Pierre Hubert REYNARD (Cafe Manager) 108 Blvd ANSPACH, BRUSSELS being unable to speak English requires an interpretor.

Interpretor (French-English) D21226 L/Cpl LEGAULT, A 2 Cdn L of C Provost Coy sworn.

Witness having been duly sworn states as follows:

"On SUNDAY 17 DECEMBER 1944 at approximately 2245 hrs at my Cafe AU BALLON, 108 ANSPACH, BRUSSELS two soldiers entered. This soldier I see here now was one of them. They asked for something to drink and they were after the waitress for quicker service, and that is how the trouble started. The waitress told them that she needed a bit of time, so this man pulled a pistol and waved it around saying "I want quick service." This happened at the bar. Then they both went over to the tables and started arguing with some British soldiers. The English soldiers didn't want to fight so the accused's comrade grabbed a chair throwing it on the floor and breaking it. He was drunk. This man calmed down then and I went to my other duties. A short while after I saw the accused and his friend on the terrace and they were arguing with other soldiers. It was 1100 PM so I rang the beel signalling the Cafe was closed. At this moment I saw the accused with his pistol in his hand waving it around. The other soldier (his friend) had a chair in his hand with which he hit more than one English soldier. At this time I approached them saying "It is now 11:00 o'clock and you will please leave now." The other soldier grabbed another chair, broke it on a table, also breaking some glasses which were on the tabel. Being afraid of more trouble I tried to get them out of the Cafe, assisted by four or five other soldiers, we put them out on the street. At this time the accused had me by the coat with one hand and with his other hand drew his pistol and holding it by the barrel, hit my on my right hand - fracturing my 5th metacarpal bone. I left then and the last thing I saw was the accused's pistol falling to the street, having been knocked from his hand by a civilian. Here is the Medical Certificate which I received from the hospital after they examined my hand, (Marked)Exhibit "A"). In my opinion the accused was drunk. I wish to withdraw my complaints. I feel that the accused had no intention of harming me or anyone else and also that he has seen considerable fighting and is worthy of this consideration.

Accused declines to cross-examine.

Second Witness: Mr Robert HUSTIN (decorator) 242 Ave BRUGMANN, BRUSSELS being unable to speak English requires an interpretor.

Interpretor (French-English) D21226 L/Cpl LEGAULT, A 2 Cdn L of C Provost Coy is sworn.

Witness having been duly sworn states:

"On I think SUNDAY, 17 DECEMBER 1944 at approximately 1100 PM I was on the street in front of the Cafe Au BALLON. I saw the manager, Mr MEYNARD and this soldier - whom I recognize. This doldier was waving a pistol around. I approached the accused and twisted his arm until he dropped the pistol. He had a knife in his belt which I removed for safety, although he had not tried to use it. I gave the knife and pistol to the Belgian Police. In my opinion the accused was drunk."

Accused declines to cross-examine this witness.

Knife and pistol not available for identification by the Witness.

Third Witness: Mr RANSKIN, Officer of the Belgian Police, BRUSSELS.

In my opinion the attendance of the above witness at this Summary of Evidence is impossible at the present time, but he will be available to give evidence on a Court Martial.

(Sgd) H H House Capt
Officer taking Summary.

Certified correct translation of abstreact from Records of Belgian Civil Police attached herewith, marked Exhibit "C".

(Sgd) H H House Capt
Officer taking Summary.

Four Witness: having been duly sworn states as follows:

"I am 768923 Cpl JOHNSON, H., of 120 Provost Coy, Corps of Military Police. On the 17 DEC 44 I was called out to the Town Hall in the Grand Place, BRUSSELS. On arrival I saw the accused, whom I recognize, with another soldier. They had been drinking. The accused was semi-conscious and laid out on the floor. He was drunk. With the help of the Civil Police and the truck driver I carried him out and laid him in the truck. I then placed him under arrest to be detained. The accused caused no trouble. I returned to the Police Station (Civil) after placing the accused in the truck and the Police Inspector showed me a gun and knife. I collected the gun and knife and asked the other Canadian soldier, who had been drinking and was not drunk, to come with me to the vehicle which he did. When we got outside he became very violent, he tried to get the Civil Police Inspector by the throat. I tried to restrain him and he took a kick at me. The gun and knife was placed in the truck after a violent struggle which I had with the other prisoner. I handcuffed him with the help of the Civil Police. I brought both prisoners to Prince Albert Barracks. Exhibit "B" is a knife similar to the one received from the Belgian Police but I did not see the scabbard before this. I cannot say that his is the same knife. I do not know what happened to the gun after I placed it in the truck.

The accused declines to cross-examine this witness.

The accused was cautioned as follows:

"Do you wish to make any Statement or to give evidence on oath You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

I do not wish to make a Statement or give evidence. I reserve my Defence.

(Sgd) H H House Capt
officer taking Summary.

I certify that the foregoing Summary of Evidence consisting of five pages was taken down by me in the presence of the accused and that RP 4(c) (d) (e) and (f) have been complied with.

In the Field
10 Jan 45

(Sgd) H H House Capt
10 C D R Bn

Request for Defending Officer

I request that an officer be appointed for my defence.

List of Witnesses for the Prosecution

Mr Pierre Hubert REYNARD 108 Blvd ANSPACH, BRUSSELS /Cafe Au BALLON
Mr Robert HUSTIN 242 Ave BRUGMANN, BRUSSELS
Mr Ranskin Belgian Police Officer Town Hall, BRUSSELS
769623 Cpl JOHNSON, H. 12- Provost Coy CMP

List of Witnesses for the Defence

NIL

List of Exhibits

Exhibit "A" - Medical Certificate
Exhibit "B" - Knife and Sheath
Exhibit "C" - Certified correct translation of Belgian Civil Police Record.

In the Field
10 Jan 1945

(Sgd) H H House Capt
10 C D R Bn.

FIELD GENERAL COURT-MARTIAL

CFA56 (To Rep of AFA51) 40-P & S-1808 (4655)

4/38S

Convened by Order of Maj Gen H.L.M. BURNS Comd Cdn Sec GHQ dated 17 JAN 45

ACCUSED. 1 Sch 21 A Gp

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D.141949	Pte	Hugh Cameron	RYNARD	1 Cdn Scottish Regt att Cdn Sec GHQ Brussels Garrison

CERTIFIED TRUE COPY

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) BELGIUM on (*date(s)*) 20 JAN 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

30/16

A1. The President, Members, waiting Member, JA, and any ~~interpreter(s) or orderly~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 118, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is fit to undergo trial by court-martial.(1)

~~The accused informs the Court that accused elects to be tried by court-martial instead of being dealt with by the CO.~~(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~Evidence to witness(es) be given orally to~~ ~~the interpreter is sworn(1) to interpret to~~ ~~the orderly is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G.L. MacDOUGALL	CAC 9 C R Bn
Member	Capt	S. ROY	CIC 11 CBR Bn
Member	Lieut	E. QUILLET	CIC 10 CBR Bn
Judge-Advocate			
Prosecutor	Lieut	J.J. H. CONNORS	RCAMC - Cdn Sec Brussel Garr
Defending Offr	Lieut.	P. LAPOINTE	CIC 10 CBR Bn

Questions by President: Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment make(s) (no) (a) plea (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(6), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~not~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~adjourns and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused:

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st 41	Guilty	Guilty	
2nd 40	Guilty	Guilty	
3rd 10	Guilty	Guilty	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of days, of which days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo six (6) months detention

(Sgd) Judge-Advocate, if any. 20 Jan 45 Date awarded. (Sgd) G.L. MacDougall Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

CONFIRM

~~I direct that the accused be not remitted to prison or detention barracks until further orders.~~(1) GLM

(1. AA 57A. Delete if not used.)

(Sgd) H.L.M. BURNS Major-Gen
Officer i/c Canadian Section
Date 20 JAN 45 Commanding GHQ 1 Sch 21 A Gp Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D.141949 Pte Rynard, H.C.	26 Jan 45	(Sgd) A.M. [illegible] Maj

Promulgated
CR 67 dated 26 Jan 45 2(Brussels) Inf Cdn Sec 1 Sch HQ 21 A Gp

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead to be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or ~~JA (Pres)~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ~~No~~ .....(5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 2, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The JA (President) to the accused's statement (2). The Court decides (not) to advise accused to change his~~ ~~plea(s) of Guilty to Not Guilty on ... charge(s). The accused is (not) so informed, and he (they) ... plea(s) to (new) plea(s) on ... charge(s). Part I of the Schedule is amended accordingly.~~

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex C , initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(2) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(3) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans ..... Do you intend to call witnesses on your behalf ?

Ans ..... Are they witnesses as to character only ? Ans .....

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3) (a), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans Yes the accused gives evidence .....

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces ~~Statement of Service and Particulars of Service~~(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to ta) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex D respectively.(3)

(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the ~~Statement(s) and~~ Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes .....(2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas MO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see insets on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

GLM

C H A R G E S H E E T

The Accused, No D-141949 Pte Hugh Cameron REYNARD, North Nova Scotia Highlanders, att Cdn Sec HQ Brussels Garrison, a soldier of the Cdn Army Overseas, is charged with

FIRST CHARGE
SEC 41
ARMY ACT

WOAS committing a civil offence, that is to say, common assault

in that he

in BRUSSELS at approx 2245 hrs 17 DEC 44 in the Cafe au Ballon, 108 Blvd Anspach, Brussels, assaulted Mr. Pierre Hubert REYNARD, manager of the cafe, by striking him on the right hand with a pistol, thus fracturing the 5th metacarpal bone in the hand.

SECOND CHARGE
SEC 40
ARMY ACT

WOAS conduct to the prejudice of good order and military discipline

in that he

in BRUSSELS at approx 2245 hrs 17 DEC 44 in the Cafe au Ballon, 108 Blvd Anspach, Brussels, caused a disturbance by waving a pistol.

THIRD CHARGE
SEC 19
ARMY ACT

WOAS drunkenness

in that he

in BRUSSELS at approx 2245 hrs 17 DEC 44 in the Cafe au Ballon, 108 Blvd Anspach, Brussels, was drunk.

In the Field
15 Jan 45

(Sgd) L.F. Payan Lt-Col
Commanding Officer
Cdn Sec HQ Brussels Grn

To be tried by Field General Court Martial.

In the Field
17 Jan 45

(Sgd) E.L.M. Burns Major-General
GO i/c
Cdn Sec 1 Echn HQ 21 A Gp.

GLM

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 1c, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 306, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-141949	Pte		Hugh Cameron	RINARD	North Nova Scotia Highrs att Cdn Sec HQ Brussels Garrison

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has(~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 17 Jan 45 endorsed by me(~~or by an offr of my staff for me~~) "To be tried by Field General Court-Martial". RLMB

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~ RLMB

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~Since unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ RLMB

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I do~~ appoint as Judge-Advocate the Offr mentioned hereunder. RLMB

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	G.L. MacDougall	X4 Lieut CAC 9 C/R Bn

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Capt or Lieut	(to be detailed by OC 11 CHR Bn)	
A Capt or Lieut	(to be detailed by OC 10 CHR Bn)	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
A Capt or Lieut	(to be detailed by OC 10 CHR Bn)	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Belgium (Country.) (Sgd) R.L.M. Burns (Signed personally. RP 105 fn 2.) Maj-Gen (Rank.)

Dat: 17 Jan 45 Commanding Cdn Sec 1 Corps HQ 21 A Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 3) 40/P & S/1697 (8143) (See overleaf for oaths and notes for use on trial.)

Approved:

Major

DJA

LGM

MEDICAL OFFICER'S CERTIFICATE

I certify that No A141964 Pte RYNARD, M.C. Regiment

is fit to undergo trial by Court-Martial.

Date 20 January 1945 (Sgd) C.P. Cion Capt
Signature of the MO

HOSPITAL SAINT-PIERRE

122, T. Haute, BRUXELLES

SINT-PIETER HOSPITAAL GLM

BRUSSEL, 322, Hoogstraat

Clinique Chirurgicale du
Heelkundige Kliniek van

Prof R. DANIS

Consultations tous les jours
de 8 a 9 heures du matin

Handplegingen alle dagen
van 8 tot 9 uur's morgens

REYNARD, HUBERT

108 Bd Anspach, Bruxelles -

fracture in is intercorpir
de la moir moite - plastre a
yurder cing vemoins -
impobence foucticunelle rotyle
temporoire de la moir at je
l'ovaouit - bar Moits
28.12.44

(Sgd)[illegible]

This is Exhibit "A" referred to in the case of D.141949 Pte Rynard H.C. taken before me this 9 day of January 1944.

(Sgd) H.H. HOUSE Capt

Case of:

I am accused: D141949 Pte Hugh Cameron Rynard North Nova Scotia Highlanders att Cdn Sec HQ Brussels Gen.

duly sworn states:

Q.1 What happened on the 17 Dec 44.

A.1. On the 17 Dec 44 I came in to town on leave from Nijmegen to Brussels and there was no rooms at the Maple Leaf Club so billets were arraigned with civilians and by the time I got settled it was 1700 hrs.

We had something to eat and went into a cafe and had something to drink. While we were in the cafe, I bought a pistol No 45 Army issue from an American soldier. I purchased the pistol because we are not allowed to carry German weapons of any kind. He was broke and I had quite a bit of money at the time. We drank quite a bit more and I don't remember anything more until the next morning. I never drank the "Rhum" issue because I don't like it. I had been drunk before but I never had the occasion to get into trouble before.

Question by the "Court"

Q.2 How old are you?

A.2 20 sir, and I have been in the army 18 months now and since September I have been in Europe, and I always have been with my unit since that time and I am a rifleman in a platoon sir, I have been with them in Scheldt and also in Nijmegen with my section since November. This is my first leave I had. The man I was with is a man from the same City as I am and would say that he is about 28 yrs old.

Q.3 Before the war I was working at the inspection board at C.I.L.

AA 83 (B) complied with.

Mr PRESIDENT

On this present case we have a soldier who has been a poor victim of circumstances and facts which he had no intentions to do at all. Pte Rynard was on leave in Brussels he met a friend and had many drinks; so, in this state, a friend who, according to the summary of evidence, was almost sober and took him to this cafe where the incident occured a thing which could have been prevented. I do understand that drunkenness is no an excuse, but we can deduce that if the soldier had never the intention or premeditation of such an action.

Rynard caused a disturbance in this cafe but there has friend made in a way as much trouble as he did, a thing which we must consider because the other soldier got away without a charge. I do understand that it is a serious offence to wave a pistol in a public place, but according to the summary of evidence, the pistol was not loaded and I don't see any mention that the accused had bullets in his pockets, for this reason, we should think that the accused didn't put anybody in danger or in a "tough spot".

And I must bring up this point, the cafe manager Mr. Pierre Hubert Reynard stated that he wishes to withdraw my complaints. I feel that the accused had no intention of harming me or anyone else and also that he has seen considerable fighting and is worthy of this consideration

Ex C LGM

SUMMARY OF EVIDENCE

Summary of Evidence in the case of NO: D141949 Pte REYNARD, Hugh, Cameron. North Nova Scotia Highlanders attached Canadian Section HQ Brussels Garrison, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on oath.

First Witness: Mr Pierre Hubert REYNARD (Cafe Manager) 108 Blvd ANSPACH, BRUSSELS being unable to speak English requires an interpretor.

Interpretor (French-English) D21226 L/Cpl LEGAULT, A 2 Cdn L of C Provost Coy sworn.

Witness having been duly sworn states as follows:

"On SUNDAY 17 DECEMBER 1944 at approximately 2245 hrs at my Cafe AU BALLON, 108 ANSPACH, BRUSSELS two soldiers entered. This soldier I see here now was one of them. They asked for something to drink and they were after the waitress for quicker service, and that is how the trouble started. The waitress told them that she needed a bit of time, so this man pulled a pistol and waved it around saying "I want quick service." This happened at the bar. Then they both went over to the tables and started arguing with some British soldiers. The English soldiers didn't want to fight so the accused's comrade grabbed a chair throwing it on the floor and breaking it. He was drunk. This man calmed down then and I went to my other duties. A short while after I saw the accused and his friend on the terrace and they were arguing with other soldiers. It was 1100 PM so I rang the bell signalling the Cafe was closed. At this moment I saw the accused with his pistol in his hand waving it around. The other soldier (his friend) had a chair in his hand with which he hit more than one English soldier. At this time I approached them saying "It is now 11:00 o'clock and you will please leave now." The other soldier grabbed another chair, broke it on a table, also breaking some glasses which were on the tabel. Being afraid of more trouble I tried to get them out of the Cafe, assisted by four or five other soldiers, we put them out on the street. At this time the accused had me by the coat with one hand and with his other hand drew his pistol and holding it by the barrel, hit my on my right hand - fracturing my 5th metacarpal bone. I left then and the last thing I saw was the accused's pistol falling to the street, having been knocked from his hand by a civilian. Here is the Medical Certificate which I received from the hospital after they examined my hand, (Marked)Exhibit "A"). In my opinion the accused was drunk. I wish to withdraw my complaints. I feel that the accused had no intention of harming me or anyone else and also that he has seen considerable fighting and is worthy of this consideration.

Accused declines to cross-examine.

Second Witness: Mr Robert HUSTIN (decorator) 242 Ave BRUGMANN, BRUSSELS being unable to speak English requires an interpretor.

Interpretor (French-English) D21226 L/Cpl LEGAULT, A 2 Cdn L of C Provost Coy is sworn.

Witness having been duly sworn states:

"On I think SUNDAY, 17 DECEMBER 1944 at approximately 1100 PM I was on the street in front of the Cafe Au BALLON. I saw the manager, Mr REYNARD and this soldier - whom I recognize. This soldier was waving a pistol around. I approached the accused and twisted his arm until he dropped the pistol. He had a knife in his belt which I removed for safety, although he had not tried to use it. I gave the knife and pistol to the Belgian Police. In my opinion the accused was drunk.

Accused declines to cross-examine this witness.

Knife and pistol not available for identification by the Witness.

Third Witness: Mr RANSKIN, Officer of the Belgian Police, BRUSSELS.

In my opinion the attendance of the above witness at this Summary of Evidence is impossible at the present time, but he will be available to give evidence on a Court Martial.

(Sgd) H H House Capt
Officer taking Summary.

Certified correct translation of abstract from Records of Belgian Civil Police attached herewith, marked Exhibit "C".

(Sgd) H H House Capt
Officer taking Summary.

Fourth Witness: having been duly sworn states as follows:

"I am 768923 Cpl JOHNSON, H., of 120 Provost Coy, Corps of Military Police. On the 17 DEC 44 I was called out to the Town Hall in the Grand Place, BRUSSELS. On arrival I saw the accused, whom I recognize, with another soldier. They had been drinking. The accused was semi-conscious and laid out on the floor. He was drunk. With the help of the Civil Police and the truck driver I carried him out and laid him in the truck. I then placed him under arrest to be detained. The accused caused no trouble. I returned to the Police Station (Civil) after placing the accused in the truck and the Police Inspector showed me a gun and knife. I collected the gun and knife and asked the other Canadian soldier, who had been drinking and was not drunk, to come with me to the vehicle which he did. When we got outside he became very violent, he tried to get the Civil Police Inspector by the throat. I tried to restrain him and he took a kick at me. The gun and knife was placed in the truck after a violent struggle which I had with the other prisoner. I handcuffed him with the help of the Civil Police. I brought both prisoners to Prince Albert Barracks. Exhibit "B" is a knife similar to the one received from the Belgian Police but I did not see the scabbard before this. I cannot say that his is the same knife. I do not know what happened to the gun after I placed it in the truck.

The accused declines to cross-examine this witness.

The accused was cautioned as follows:

"Do you wish to make any Statement or to give evidence on oath You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

I do not wish to make a Statement or give evidence. I reserve my Defence.

(Sgd) H H House Capt
officer taking Summary.

I certify that the foregoing Summary of Evidence consisting of five pages was taken down by me in the presence of the accused and that RP 4(a) (d) (e) and (f) have been complied with.

In the Field
10 Jan 45

(Sgd) H H House Capt
10 C D R Bn

Request for Defending Officer

I request that an officer be appointed for my defence.

List of Witnesses for the Prosecution

Mr Pierre Hubert MEERARD 108 Blvd ANSPACH, BRUSSELS /Cafe Au HALION
Mr Robert HUSTIN 242 Ave BRUGMANN, BRUSSELS
Mr Ramskin Belgian Police Officer Town Hall, BRUSSELS
7690823 Cpl JOHNSON, H. 12- Provost Coy CMP

List of Witnesses for the Defence

NIL

List of Exhibits

Exhibit "A" - Medical Certificate
Exhibit "B" - Knife and Sheath
Exhibit "C" - Certified correct translation of Belgian Civil Police Record.

In the Field
10 Jan 1945

(Sgd) H H House Capt
10 C D R Bn.

M141949 Name RYNARD H C | Sqn, Battery or Company | Corps CDN INF CORPS | Date of enlistment 9 Aug 43 | OC Badges N/A | Service or Proficiency Pay Ex D QLM | MFM 6 (AFB 1271) 40/PAS/136 (3438)

Company Conduct Sheet Date of last entry in N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	16 Sep44	Pte		AWL from 0745 hrs 16 Sep 44 to 1320 hrs 19 Sep 44 (Absent 3 days 5 hrs 35 mins)		7 days CB	19 Sep 44		Fo f 1 days pay FR&I 149(1)(a)

"CERTIFIED TO BE A TRUE EXTRACT FROM THE REGIMENTAL BOOKS AND DOCUMENTS IN MY CUSTODY"

(Sgd) G.E. Marin Lieutenant
Officer IC - Records "A"
9 Jan 45. Cdn Sec GHQ 2nd Echelon, 21 A Gp

(PTO)

COUNTER NUMBER 582549

HOUR 11 10

OPERATOR'S INITIALS PC

RELIEVING OPERATOR _____

Affidavit

PROVINCE OF ONTARIO
COUNTY OF CARLETON
TO WIT:

I, Gladys Hunter of the City of Ottawa, in the County of Carleton, an employee of the Department of National Defence, make oath and say:

1. THAT I am presently employed as a camera operator making microphotographic copies of Departmental documents for the purpose of providing a permanent record of same.

2. THAT on the date indicated therein I did make microphotographic copies of files listed in Appendix "A" hereto and of all documents contained thereon.

3. THAT the said microphotographic copies may be identified from the indexing data and the job and reel numbers contained in Appendix "A".

SWORN before me at the City of Ottawa, in the County of Carleton, this day of A.D. 19

CAMERA OPERATOR

A NOTARY PUBLIC

Dated DEC. 3 19 52

APPENDIX "A" TO THE AFFIDAVIT

CAMERA OPERATOR'S REPORT

	JOB NO. 44	REEL NO. 89
	BOOK NO. 7-5	
PRODUCTION DATA	44-89A	INDEXING DATA 44-89B
DATE / HOUR	BEGINS WITH: RUSSELL L.C.	RYAN P.J.
STARTED	1.	
FINISHED	2.	
TOTAL NO. OF HOURS 1 2/3	3.	
TOTAL NO. OF IMAGES 1417	ENDS WITH: RYAN O.P.	RYNARD H.C.

J.B.

END

SECOND

SIDE

44.89