
44.70

START

FIRST

SIDE

QQQ-14

PTE OSMOND FS.

SCHEDULE.

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

Accused: F48750 Pte Francis Stephen Osmond 1 Bn 1 CBRR.

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	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, and in loss of kit see RP 44 fn 6.)

Nil is 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 58 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 imprisoned with hard labour for two years, and to be placed under stoppages of 1 day in the amount of $37.70 as per defaulters.

2 Jan 45 (Sgd) A Mackenzie Lt Col Mayor

(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 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 but remit one years imprisonment

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) ..... Brig

Date 3 June 44 Commanding COMMANDER I CDN BASE REINFORCEMENT GROUP Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKED. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
F 48750 Pte Osmond F S	4 June 44	D B Beedson Lieut

..... Actg C.S.O. 1 Cdn Base Reinforcement Group

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 a 449-14 H 107

RECEIVED 6 JUL 1944 C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA2) 40-P-S-S/1656 (28604)

Convened by Order of Brig E W Halladay Comd 1 CBRR Gp dated 1 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) 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.
F48750	Pte		Francis Stephen	Osmond	1 Bn 1 CBRR

PROCEEDINGS REVIEWED 6-7-44 McQuillan Capt REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

10 JUN 1944 CANADIAN SECTION G.H.Q.

PROCEEDINGS OF TRIAL.

Held at/in/ F'd in (country) Italy on (date(s)) 2 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(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 0830 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(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	A Mackenzie Lt Col	38 Bty 1 CBRR Gp.
Member	Capt	K E Cross	6 Bn 1 CBRR Gp.
Member	Lieut	W G Champ	6 Bn 1 CBRR Gp.
Judge-Advocate			
Prosecutor		1 KOW Mackenzie	1 Bn Cdn Rd.
Defending Offr	Lieut	W S K Jones	1 Bn Cdn Rd.

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 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 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 Rule cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~were~~ 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 ..... p .....

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 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 the 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 certificate 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 155. 2. RP 40(A), see 60(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 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(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 F and Ex H 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 Yes No Sir (See off 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 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 XIV, 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.

Wkly Cas. Rpt

CHARGE SHEET

The accused, F.45750 Pte. Francis Stephen OSMOND, 1 Canadian Base Reinforcement Battalion, 1 C.B.R.D., a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
A.A. Sec 15(1)

WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

In the Field, in Italy, absented himself without leave from 0800 hrs, 4 May 44, until apprehended at AVELLINO at 1915 hrs, 26 May 44. (Total absence 22 days, 11 hrs and 15 mins.)

SECOND CHARGE
A.A. Sec 24(c)

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

in that he,

In the Field, in Italy, on 30 May 44 was deficient of articles of kit as under:-

		100% value.	75% value
Blouses, B.D.	1	$ 5.25	$ 3.92
Boots, ankle, prs	2	10.92	8.19
Great-coat,	1	11.55	8.66
Jersey pullover	1	1.79	1.34
Socks, woollen prs	2	.74	.65
Brushes, hair	1.	.34	.25
Cap comforter,	1	.34	.25
Forks, table	1	.07	.05
Holdall	1	.19	.14
Housewife,	1	.17	.13
Knives, clasp	1	.86	.64
Vests, cotton, gym	1	.36	.27
Belts, waist, W.E.	1	.74	.55
Bottles, water	1	.82	.61
Braces, W.E.	2	.60	.45
Frogs, bayonet	1	.19	.14
Helmet, steel	1	2.39	1.79
Pouches, basic	2	1.19	.89
Trousers, B.D.	1	5.39	4.04
	TOTAL --	$ 43.90	$ 32.76

In the Field,
30 May 44.

[signature] Major,
(R.D. Clendenning)
T/Commanding Officer,
1 Cdn Base Rft Bn., 1 C.B.R.D.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

1 Jun 44

[signature]
(E. W. Haldenby) Brigadier
Commander
1 Cdn Base Rft Group

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/F&S/1697 (2803)

(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-51513	Pte		Sanford Louis	REDDEN	1 Bn 1 CBRD
F-45750	Pte		Francis Stephen	OSMOND	1 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*) 1 Jun 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 ; ~~[illegible]~~ 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.

~~[illegible]~~ GWH

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

~~[illegible]~~ GWH

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

PRESIDENT.

Major — D. ARCHIBALD (CIC) 38 Cdn Base Rft Bn 1 CBRGp
(Rank.) — (Must be named. RP 106.) — (Unit.)

MEMBERS.

Capt — R.E. CROSS (CIC) 8 Bn (NET Wing) 1 CBRGp

Lieut — W.A. CHAMP (CIC) 8 Bn (NET Wing) 1 CBRGp
(Rank.) — (Named or detailed. RP 106.) — (Unit.)

WAITING MEMBER.

Capt or Lieut — to be detailed by OC 8 Bn (NET Wing) — 1 CBRGp
(Rank.) — (Named or detailed, if any. RP 106.) — (Unit.)

~~[illegible]~~

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

On Active Service in the Fd

in Italy — (E. W. Haldenby) — Brigadier
(Country.) — (Signed personally. RP 105 fn 2.) — (Rank.)

Date 1 Jun 44 — Commanding 1 Cdn Base Rft Group
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(*C*)), any objections (*RP* 95(*B*)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 95(*C*), 87(*C*), 92(*C*) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(*C*).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(*C*), 92(*C*) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(*E*), *KR Can* 563(*a*).)

(vii) Summing up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 557.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can* 566. *As to certified copies of regimental books see AA* 163 (1) (*g*) (*b*).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(9), *RP* 118(*C*), *MML* p 769.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

Medical Ltd.

MEDICAL OFFICERS CERTIFICATE
(KR (Can) 557)

I certify that I have this morning examined No F49740 Rank Pte

Name Osmond. F. S. of C.B.H.

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

In the Field

Date 7 June 44

[signature]
(Medical Officer)

Plea of mitigation in the case of F4 5750 Pte Ormond, F.S.

This man joined the army in 1941. He served for 2 years with the Victoria Highlanders. He came over to England last year and only recently arrived in this theatre. He has expressed to me a desire to join his unit as soon as possible and I respectfully suggest that if the Court can see fit to give him a minimum sentence he can best serve his country at the front.

Lt-Col James G.

A
Ebd. G

Summary of Evidence

in the case of

F 45750 Pte Francis Stephen Osmond,
1 Canadian Base Reinforcement Battalion,
1 C.B.R.D.

The Commanding Officer directs that the evidence be taken under oath.

First Witness
For the Prosecution.

Lieut. D. B. Dickson, Acting Adjutant, 1 CBR Bn, 1 CBRD, having been duly sworn, states:-

I am Lieut. D. B. Dickson. I am acting as Adjutant of 1 Bn, 1 CBRD. I present a certified true copy of the Record of the Declaration of a Court of Inquiry, assembled on 26 May 44, showing that the accused, F 45750 Pte. Osmond, F. S, illegally absented himself without leave from 0800 hrs 4 May 44, and that he is still absent, and that on 26 May 44 he was deficient of articles of kit in the amount of $ 50.25 (100% value) or $ 37.81 (75% value). I also submit, Certificate of Apprehension in accordance with Army Act 163(1)(JJ) showing that the accused was arrested at AVELLINO at approximately 1915 hrs 26 May 44. This certificate came into my possession through normal channels.

D B Dickson Lieut

The accused declines to cross-examine the witness.

(over)

The Record of the Declaration of a Court of Inquiry, and Certificate of Arrest, read over, shown to the accused, marked Exhibits "A" and "B" respectively and attached to the Summary.

C. E. Senecal Pvt.
Officer taking the Summary.

Second witness:
For the Prosecution. F34585 L/Cpl. McKinley, F, 1CBR Bn, 1CBRD, having been duly sworn, states:-

I am F34585 L/Cpl. McKinley, F, acting in the capacity of CQMS for #2 Coy, 1CBR Bn, 1CBRD. On 30 may 44, I inspected the kit of F45750 Pte. Osmond F. S. the accused and I found him deficient of articles of kit B to the value of $43.98 being 100% value or £32.76 being 75% value. The accused could not account for these shortages. I am in possession of the Price list of clothing and equipment and am familiar with its contents. I submit the list of shortage of kit.

F McKinley

The accused declines to cross-examine the witness.

The list of shortages referred to by the witness, read over & shown to the accused, marked Exhibit "C" and attached to the Summary.

C Strachan Lieut.
Officer taking the Summary.

(over)

Question to the Accused,

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

Answer to the Accused,

I reserve my defence.

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

C. E. Seneca Lieut.
Officer detailed to take the Summary of Evidence.

In the Field,
30 May 44.

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 In the Field, on the 26th day of May 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. F.45750 Pte. Osmond, F.S.

DECLARATION.

The Court declare that F.45750 Pte. Osmond, F.S., 1 Cdn Base Rft Bn., 1 C.B.R.D., illegally absented himself without leave, in the Field, at 0800 hrs on the 4th day of May, 1944, that he is still absent and that on the 26th day of May, 1944 he was deficient, and that he is still deficient of the following articles:

List attached.

Names of President and Members

President: Lieut. D.B. Dickson,
1 C.B.R.Bn., 1 C.B.R.D.

Member : Lieut. P.J.F. Sherwood,
1 C.B.R.Bn., 1 C.B.R.D.

Signature of Commanding Officer R.D. Clendenning, Major

CERTIFIED TRUE COPY.

DBDickson Lieut

Signature of Officer having custody of the Original Record.

This is Exhibit "A" referred to in the Summary of Evidence in the case of F43780 Pte. Desmond, F.S. taken down by me this 30 May 44.
[illegible]
Officer Taking the Summary.

[illegible]

25 May 44.

Kit Deficiencies of F.45750 Pte. Osmond, F.S.

		100% Value	75% Value
Trousers, Battle Dress,	1	$ 5.39	$ 4.14
Bonnet, Tam O'Shanter	1	.60	.45
Boots, Ankle, prs	2	10.92	8.19
Drawers, C.S., prs	2	.86	.70
Greatcoat	1	11.55	8.66
Pullover	1	1.79	1.34
Shoes, canvas, prs	1	.65	.49
Socks, woollen prs	3	1.11	.84
Braces, prs	1	.28	.21
Brushes, Hair	1	.34	.25
Brushes, shaving	1	.37	.26
Brushes, tooth	1	.11	.09
Caps, comforter	1	.34	.25
Combs, hair	1	.04	.03
Dressing, First Field	1	.24	.18
Forks, table	1	.07	.06
Spoons, N.S.	1	.07	.06
Holdall,	1	.19	.14
Housewife,	1	.17	.13
Clasp knife,	1	.86	.64
Vests, cotton, gym	2	.72	.54
Towels, hand	2	.64	.48
Belts, waist	1	.74	.55
Bottles, water	1	.82	.61
Braces, W.E.	2	.60	.45
Carriers, water bottle	1	.52	.39
Frogs, bayonet	1	.19	.14
Helmet, steel	1	2.39	1.79
Pouches, basic	2	1.19	.89
Tins, mess (sets)	1	.35	.26
Blankets, G.S.	2	6.14	4.60
TOTAL VOCAB. PRICE		$50.25	$ 37.81

CERTIFICATE OF APPREHENSION
SURRENDER

IN ACCORDANCE WITH ARMY ACT SEC. 163 (1) (jj)

I, Capt. H.F. Law, Officer Commanding

No. 1 Cdn L of C Provost Coy., certify that Regt No.

[illegible].....Rank Pte.....Name [illegible].....

Unit 1 Bn 1 C.S.S.C.....

was apprehended by No. 1 Cdn L of C Provost Coy. ,
surrendered to

at AVELLINO.....Italy, at approximately

1913.....hours 26 May.....1944

At the time of his apprehension he was
surrender

wearing Military Uniform.....

(H.F. Law) Captain,
Officer Commanding
No. 1 Cdn. L of C
Provost Company.

This is Exhibit "B" referred to in the Summary of Evidence in the case of F 45750 Pte. Osmond, F. S. taken down by me this 30th May 1944.

C. E. Jennet, Lieut.
Officer taking the Summary of Evidence.

Kit DEFS OFD 30 May 44
F 45750 Pto Osmond F.S.

2 Cy
CBH

Articles	Quan	100 %		75 %	
Blouses Battle. Dress	1	5	25	3	92
Boots Ankle pos	2	10	92	8	19
Great Coat	1	11	55	8	66
Jersey Pullover	1	1	79	1	34
Sock woolen pos	2		74		65
Brushes Hair	1		34		25
Cap Comforter	1		34		25
Forks Table	1		07		05
Holdall	1		19		14
House wife	1		17		13
Knives Clasp	1		86		64
Vests Cotton (gyw)	1		36		27
Belts waist. we.	1		74		55
Bottles water	1		82		61
Braces we	2		60		45
Frogs Bayonet	1		19		14
Helmet Steel	1	2	39	1	79
Pouches Basic	2	1	19		89
Trousers Battle. D		5	39	4	04

Total vocab price 100 % $ 43.90

Total vocab price 75 % $ 32.76

LIST OF EXHIBITS

Exhibit "A" -- Record of the Declaration of a Court of Enquiry.

Exhibit "B" -- Certificate of Apprehension.

Exhibit "C" -- List of shortages of kit.

LIST OF WITNESSES

In the case of F.45750 Pte. Osmond, F.S., 1 C.B.R.Bn., 1 C.B.R.D., a soldier of the Canadian Army Overseas.

WITNESSES FOR THE PROSECUTION

Lieut. D.E. Dickson, 1 C.B.R.Bn., 1 C.B.R.D.

F.34585 L/Cpl. McKinley, F., 1 C.B.R.Bn., 1 C.B.R.D.

WITNESSES FOR THE DEFENCE

NIL.

STATEMENT BY THE ACCUSED.

I certify having received free of charge, a copy of the Summary of Evidence, list of Witnesses, list of Exhibits and Charge Sheet.

I desire the services of an Officer to represent me at the trial.

Date 30 May 44

F. S. Osmond.

CHARGE SHEET

F45750 Name Osmond, F.S. | Sqn, Battery, or Company | Corps C.I.C. | Date of enlistment 1-4-41 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 10/PAM/130 (3438)

Date of last entry in Company Conduct Sheet: Nil | No and date of last drunk: Nil | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc: H.Morten Lieut. | 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 7 Dec 43 M.M. Lt.								
Hazelhurst	14/4/41	Pte		A.A.15(1), AWL 14-4-41 (2200 hrs) to 1100 hrs 15-4-41	Cpl Hilton Cpl. MacDonald	admonished	17-4-41	Major MacLean	Forf. 1 day's pay.
Valcartier	1/6/41	Pte		A.A.40, Conduct, 4c, creating a disturbance.	Documentary	7 days' C.B.	3-6-41	Cent. Scout.	
Dartmouth	5/8/41	Pte		A.A.15(1) AWL from 2200 hrs 5-8-41 till 1600 hrs 6-8-41	CPL. MacDonald, JP	14 days' C.B.	7-8-41	Col.S.M.K. Friar,	Forf. 1 day's pay.
Dartmouth	8/8/41	Pte		A.A.40 Conduct, etc., having a dirty rifle.	Sgt. J.J. Barthe	7 days' C.B.	8-8-41	Lt.H. Mesher,	
Dartmouth	26/8/41	Pte		A.A.15(1) AWL from 1200 hrs 26-8-41 to 1745 hrs 6-9-41	Documentary	28 days' Detention	10-9-41	Major R. Rogers	12 days' Pay
Dartmouth	4/1/42	Pte		A.A.15(1) AWL 2200 hrs 4-1-42 till 1915 hrs 19-1-42	Documentary	28 days' Detention	22-1-42	Major R. Rogers	Forf 15 days' Pay. Cost of apprehn. $16.15

(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
Dartmouth	19/7/42	Pte.		A.A.15(1) AWL from 0600 hrs 19-7-42 till 1740 hrs 7-8-42	A/Cpl Mackay, J.E.	28 days' Detention	10-8-42	Major R. Rogers	Forf. 20 days' pay. Cost of apprehn. $11.27
Dartmouth	12/6/42	Pte.		A.A.15(1) AWL from 0900 hrs 12-6-42 to 1000 hrs 15-6-42	A/Cpl R.L. Emfree.	28 days' Detention.	16-6-42	Major H.G. Scott.	Forf. 3 days' pay.
Dartmouth	17/8/42	Pte.		(1) A.A.40, Conduct, etc., spilling water in Coy billets and offering to fight.	Pte.C.A. Hendsley.	7 days' C.B.	19-8-42	Capt.J.R. Robins,	
				(2) A.A.40, Conduct, etc., absent from defaulter's parade.	Cpl. S.S. Facey				
Aldershot	11/10/42	Pte.		A.A.40, Conduct, etc., improper possession of D.N.D.vehicle 41-1-2218 from "B" Force transport lines and causing damage to the amount of $ 50.95.	Cpl. G.H. Williams	Stoppage of pay to pay damage.	22-10-42	Lt-Col.J.J. Jeffery.	
Gander, Nfld.	25/8/43	Pte.		A.A.15(1) AWL from 0630 hrs 25-8-43 till 0130 hrs 27-8-43	Cpl. Hockey, W.E.	28 Days' Detention. 2 days' C.B.	28-8-43	J.H.Nicholson, Capt.	Aut.forf. 2 days' pay.

MFM 6
(AFB 122)
40/PAS/136 (3438)

No F45750 Name Osmond, F.S. Sqn, Battery, or Company Corps C.I.C. Date of enlistment 1-4-41 GC Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 25-8-43 No and date of last drunk Nil Period not reckoning towards freedom from extra fine Nil Sheet No 2 Signature OC Company, etc N. Morten Lieut. 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,	31-12-43	Pte		A.A.15 (1), WOAS, AWL until surrendering to civil police.(13 days,15 hrs 40 mins.)	Documentary.	28 days' Detention	18 Jan 44	Major C.W.Abell	14 days' Pay & 3 day's pay for close arr
Field,	7-2-44	Pte.		A.A.10(4) WOAS Breaking barracks while under C.B., Cost of apprehension £ 0-5-8.	Documentary.	7 days' detention 21 day's Pay.	9-2-44	Lt.-Col. JN Medhurst	Total forf 28 days' pay
At-sea	29-2-44	Pte		A.A.40, Conduct, etc., failing to appear on time at place of parade.	Lt. Moir.	5 days' pay	29-2-44	Capt. A.K. Gale.	
				~~Certified to be a true copy f~~					
Field,	17-3-44	Pte		A.A.15(1) WOAS, AWL from 0815 hrs 17-3-44 till 2045 hrs 18-3-44.	Sgt. Gillis,J.	21 days' C.B. 14 days' Pay	20-3-44	Lt.-Col.V. McKenna.	Aut Forf 2 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,	21-3-44	Pte		A.A.15(1) WOAS, AWL from 0815 hrs 21-3-44 till 2315 hrs 3-4-44. (absent 13 days 15 hrs)	~~21-3-44~~ Documentary	28 days' Pay 28 days' F.P.	6-4-44	Lt.-Col. V. McKenna	Aut forf 14 days' Pay.

CERTIFIED TO BE A TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY.

D.B. Dickson Lieut

OFFICER IN CUSTODY OF REGT'L BOOKS.

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. ..... Rank ..... Name ..... of ..... 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 30th day of May 1944

D.B. Dickson Lieut
Adjutant
Can I Can Base Reinforcement Depot

~~18—The accused has served as a non-commissioned officer continuously, without reduction, to the present date.~~

~~Date of Promotion.~~

~~In the rank of ..... DDD ..... years.~~

~~In the rank of ..... DDD ..... years.~~

~~In the rank of ..... DDD ..... 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 sources as are available and the paragraphs concerned amended accordingly.*)

"H"
Which Annexed

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
F.45750	Pte.	OSMOND, F.S.	1 C.B.R.Bn., 1 C.B.R.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 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 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 A.A. Sec. 15 (1)	4 times	10 times.
For A.A. Sec. 40	1 times	6 times.
For A.A. Sec. 10 (4)	1 times	1 times.
~~For DBD~~	~~times~~	~~times.~~
~~For DBD~~	~~times~~	~~times.~~

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

~~or DBD~~

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

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

~~Previous convictions† of the accused by a court martial or 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 DBD day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for 5 days in civil custody, and — days in military custody, making a total of 5 days, of which — days were spent in hospital.

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

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 1 Apr 41.

~~7. The service which the accused is allowed to reckon to the 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 DBD 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 DBD.)~~

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

~~12. (In the case of an officer.) The accused holds in the army the rank of DBD, dated and in his regiment (or corps or department) the rank of DBD dated~~

(*22847) Wt.31703/1977 10,000 10/42 A. & E.W. Ltd. Gp.698
(23927) Wt.32858/1237 32,000 3/42 " "

TTT-209. Case #2.

Ste. Osmon. R.Y

See Lh-52 for 1st case.

SCHEDULE.

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

Accused: G 32113 Pte Roy GORDON OSMON 1 Bn 1C RBt

	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	Not Guilty	Guilty	Guilty of AWL only from 0800 hrs 28 Mar 44 until 1800 hrs 28 Apr 44
2nd	Charge	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, 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 60 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 undergo detention for ~~three months~~ ninety days (ABLE) and be put under stoppages of Pay until he has made good the sum of $ 23.44 in respect of Kit deficiencies.

(Sgd) ..... Judge Advocate, if any. 6th Jul 44 Date awarded. (Sgd) A Sherbly May 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:

Confirmed

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

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

(Sgd) GW Haldenby Brig.

Date 29 June 44 Commanding COMMANDER 1 CDN BASE RFT GROUP Confirming Officer.

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

Accused.	Date.	Signature of Offr.
G 32113 - Pte. Osmon, R.G.	3 July 44	J.S. Logan, Capt. 1 Coy. 1 Bn. - 1 C.B.R.D.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160. TTT 209

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA2) 40/P.A.N. 1608 (2864)

Convened by Order of Brig G W Haldenby Comd 1 C B R Gp dated 23 Jun 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.
G 32113	Pte	Roy GORDON	OSMON	1 BN 1 C BRD

PROCEEDINGS REVIEWED 17 Aug 44 G&C W.C. Inch Capt. REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 27 June 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 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 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 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 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	Major	C S Markle	CIC 8 BN 2 C BRD
Member	Capt	D C Mathews	CAC 3 Bn 2 C RRD
Member	Lieut	J F H Laban	CAC 2 Reinforcement Centre
~~Judge Advocate~~	~~Lieut~~	~~W A Hodges~~	~~CIC 1 Bn~~
Prosecutor	Lieut	W E Hodges	CIC 1 Bn 1 C BRD
Defending Offr	Lieut	K H W Mackenzie	CIC 1 Bn 1 C BRD

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 G 32113 Pte OSMON before arraignment makes ~~(a)~~ plea(s) ~~(b)~~ (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 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.(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 P.

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 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.

Deleted in toto

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 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 ..... 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 .....
(*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 D and Ex E 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. See statement D6 and Diffy Closing address (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, RP 48. 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.

C H A R G E S H E E T

The accused, G. 32113, Pte. Roy Gordon OSMON, 1 Cdn Base Rft Bn., 1 C.B.R.D., 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, in Italy, absented himself without leave, from 0800 hrs, 21 Mar.'44, until apprehended at SALERNO, at 0430 hrs, 4 June '44. (Total absence, 74 days, 20 hrs, and 30 mins.)

SECOND CHARGE
A.A. Sec. 24(2)

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

In that he,

In the Field, in Italy, on 16 June '44, was deficient of articles of kit, as under:-

Articles	100% Value	75% Value
	$	$
1 - Blouse, B-Dress	5.25	3.94
2 - Drawers, Woollen.	2.40	1.80
2 - Drawers, Cellular	.86	.65
1 - Gloves, (prs)	.47	.35
1 - Greatcoat	11.55	8.66
1 - Jersey pullover	1.79	1.34
1 - Trousers, denim	2.51	1.88
1 - Blouse, denim	2.64	1.98
2 - Vests, Woollen.	2.40	1.80
1 - Braces	.28	.21
1 - 1st. field dressing	.24	.18
1 - Knife, clasp	.86	.65
	$ 31.25	$ 23.44

R.D. Clendenning Major
(R.D. Clendenning)
T/Commanding Officer,
1 Cdn Base Rft Bn., 1 CBRD.

In the Field,
22 June '44.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

E.W. Haldenby
(E. W. Haldenby) Brigadier
Commander
1 Cdn Base Rft Gp - CMF

25 Jun 44

FIELD GENERAL COURT-MARTIAL

CFA99 (IE Ilwd of AFA83)
40/FA83/1697 (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.
C-32113	Pte		Roy Gordon	OSMON	1 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*) 25 Jun 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial". EWH

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

PRESIDENT.

Major	C.S. NICKLE	(CIC)	8 Bn 2 CBRD
(Rank.)	*(Must be named. RP 106.)*		*(Unit.)*

MEMBERS.

Capt	D.C. MATTHEWS	(CAC)	5 Bn 2 CBRD
Lieut	J.F.H. LABAN	(CAC)	2 Cdn Reallocation Centre
(Rank.)	*(Named or detailed. RP 106.)*		*(Unit.)*

WAITING MEMBER.

Capt or Lieut	to be detailed by OC 2 Cdn Reallocation Centre	
(Rank.)	*(Named or detailed, if any. RP 106.)*	*(Unit.)*

JUDGE ADVOCATE. EWH

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

On Active Service in the Fd

in Italy	E. W. Haldenby	Brigadier
(Country.)	*(Signed personally. RP 105 fn 2.)*	*(Rank.)*

Date 25 Jun 44 Commanding 1 Cdn Base Rft Group
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(D)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to *p 4* of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(2), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICERS CERTIFICATE.
(KR (Can) 557)

I certify that I have this morning examined No. B33113 Rank Pte.

Name Osmond, B.J. of #1 Bn. #1 C.B.G.D.

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

In the Field

Date 27 June 44.

(Medical Officer)

D. Lieut. W. J. ~~[illegible]~~ RINN asst Adj. 1 Bn 1CBRD duly Sworn states.

I have here & submit as evidence a certified true copy of the Record of the Declaration of a Court of inquiry on the illegal absence of a Soldier. G32113 Pt OSMAN R.G. who was absent on 21st day of March at 0800 hrs. and that he was still absent on 11 Apr 44. The Court found a shortage of Kit to the amt of 100% Value $31.25. and 75% Value 23.44. I submit this Declaration as ex ibit "A".

I further submit as exibit "B" a certificate of arrest stating that G32113 Pt Osman R.G. was arrested at Salerno at 0430 hrs on 4 June 44 by 246 Provost Coy C.M.P. Signed by a Capt. of the Provost Coy. These documents Came to me thro normal channels. Cross examined. While the accused was absent from your Bn Could he have

~~[illegible]~~ been held under arrest some place else. Or

D. ans. yes that is true.

No. Re examination

No exam by Court

R.P. 8 3(B) complied with.

D1 D32113 Pt OSMAN R.G. 1 Bn 1 CBRD
duly sworn states.

When I went absent from 1 Bn 1 CBRD on 21 Mar 44 I went from Avellino to POMIGLIANO. stayed there about 14 days and then went to Foggia for about 3 days then to BARI and on to TARANTO and to REGGIO. I went to the Town major and was put under arrest by him about 1800 hrs on 28 Apr 44. I was put in the Italian jail and kept there about 5 days and then escorted to Messina. I stayed there until about 11 May 44 in the town guard Room which was looked after by English Soldiers. I was returned to REGGIO and placed in the Italian prison again. I waited for an escort back to Salerno which was a draft going to Salerno I was taken to Salerno [redacted] about 0330 hrs and turned over to American Police and one

British provost. I was taken to the town [illegible]
Guard Room.

I stayed there until marched to 1 C B.R.D.

Cross examined. They were not feeding us proper meals at the Italian jail at Reggio. I complained and was sent to a Br controlled guard house at MESSINA ~~Examined~~.

R.P. 63 (B) complied with

Closing address by Def offr. Lt. KAW
MacKinzie, 1 Bn. 1CBRD

This case was handed over to me about two days ago to check. I was unable to get Pt. due to a shortage to check & obtain proof of PtOSMANS statement. I ask the Court to believe that the Certificate of arrest marked exhibit "B" is in error in that it is marked "Was arrested at Salerno", when it should read "was handed over under close arrest at Salerno". The accussed is very pale and not Sunburned which I invite you to believe comes from his confinement in Reggio, Messina & again in Reggio. If the Court does consider this plea I ask them to consider that he has already undergone 2 mos. in detention. The accused is married.

RP 83 (B) Complied with.

Closing address by Pros. Offr. Wm

The accused claims absense from 21 Mar 44 until 28 apr. having been arrested in Reggio. Thro the certificate of arrest & Declaration of Court of Inquiry the pros has proved his absence from 2. Mar 44 until 6 4 30 hrs 4 Jun 44. The accused statement is without corroboration.

Army Form B 115 684 "10"

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 In the Field, on the 11th day of April 1944, 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. G.32113 Pte. OSMON, R.G.

DECLARATION.

The Court declare G.32113 Pte. OSMON, R.G., 1 Cdn Base Rft Bn., 1 C.B.R.D., illegally absented himself without leave In the Field at 0800 hrs on the 21st day of March 44, and that he is still absent, and that on 21 Mar 44 he was deficient , and that he is still deficient of the following articles:-

List attached.

Names of President and Members Lieut. C.E. Snnechal, 1 CBRBn, 1 CBRD

Lieut. R.E. Logan, 1 CBRBn, 1 CBRD.

Signature of Commanding Officer R.D. Clendenning, Major.

CERTIFIED TRUE COPY from the Regt'l Books in my custody.

Signature of Officer having custody of the Original Record.

Kit deficiencies of June 16/44

G-32113 Pte Asman K. G.

	100%	75%
1 Blouse B.D.	$ 5.25	$ 3.94
2 drawers w.	2.40	1.80
2 drawers cot.	.86	.65
1 ~~Gloves fur~~	.47	.35
1 Greatcoat	11.55	8.66
1 Jersey pullover	1.79	1.34
1 Trousers denim	2.51	1.88
1 Blouse denim	2.64	1.98
2 Vest w.	2.40	1.80
1 Braces	.78	.71
1 Dressing Field	.24	.18
1 Knife Clasp.	.86	.65
	$ 31.75	$ 23.44

Kit inspected when reported A. W. L. Mar. 21/44
Re-inspected this date and shortages ~~found~~ as listed

F. J. Cloos
C.Q.M.S.

This is Exhibit "C" referred to in the Summary of Evidence in the case of G 32113 Pte. Osmon, R.G., taken down by me this 17th day of June 1944.

C E Henschel Lieut.
Officer taking the Summary

CERTIFICATE OF ARREST.

Certificate in accordance with the Army Act Section 163 (1) (jj).

Exhibit B

I, Captain A.L. Marshall certify that :-

No. G 32113 Rank Pte Name Osman R.G.

Unit Carlton and Yorks Regt. 1st.Can.Div. was arrested at Salerno

at 0430hrs. hours on the 4-June 44 1944

Signature of P.M., APM, or other officer into whose custody the above named was taken on arrest.

A.L. Marshall Capt.,

Commanding,

246 Provost Coy., CMP

Date 4 June 44

138/174.7[illegible]/23-4/[illegible]

Summary of Evidence

in the case of

G 32113 Pte. Osmon, R. S., a soldier of the Canadian Army Overseas, 1 Cdn Base Rpt Bn., 1 C. B. R. D.

The Commanding Officer directs that the evidence be taken under oath:—

First Witness For the Prosecution.

Lieut. W. J. Rinn, 1 C B R Bn, 1 C B R D having been duly sworn, states:—

I am Assistant Adjutant of 1 C B R Bn, 1 C B R D. I submit certified true copy of the Record of the Declaration of a Court of Inquiry on the illegal absence of the accused G 32113 Pte. Osmon, R. S., showing that he absented himself without leave from 0800 hrs, 21 Mar 44 and still absent on 11 Apr 44 and that he was deficient of articles of kit to the value of $37.07. I, also, submit Certificate of Arrest showing that the accused was arrested at SALERNO at 0430 hrs 4 June 44. These documents came into my possession through normal channels.

W J Rinn Lieut

The accused declines to cross-examine the witness. The "Record of the Declaration of a Court of Inquiry" and "Certificate of Arrest" referred to by the witness, produced, read over, shown to the accused, marked Exhibits "A" and "B" respectively and attached to the Summary.

C G Henecker Lieut.
Officer taking the Summary.

Second witness
For the
Prosecution

B66023 CQMS Stokes, A. J. E., 1 CBR Bn, 1 CBRD, having been duly sworn, states:-

I am CQMS for #1 Coy, 1 Bn, 1 CBRD. On 16 June 44 Q. kit inspected, the accused S32113 Pte. Osmon, R. E., and I found him to be deficient of articles of kit, to the sum of $31.25 being 100% value of $23.44 being 75% value. I am in possession of Price List of clothing and equipment and am familiar with its contents. The accused could not account for the shortage.

A. J. Stokes

The accused declined to cross-examine the witness.

The "List of deficiencies" referred to by the witness, produced, read and shown to the accused, marked Exhibit "C" and attached to the Summary.

Officer taking the Summary.

Question to the Accused

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

Answer by the Accused. (I wish to give evidence upon oath. The accused, 633113 Pte. Osmon, R.G., 1CBRGn. 1CBRD having been duly sworn, state:

On 21 Mar 44, I went AWL. from 1 Bn, 1C.B.R.D. I went to POMIGLIANO where I stayed about 14 days. I, then went to FOGGIA, BARI, TARANTO, REGGIO. I was arrested in REGGIO at about 1800 hrs, on 28 Apr 44 placed under close arrest by the Town Major. I was taken to the Italian prison in Reggio, kept there for 5 days, then escorted to MESSINA, in Sicily and placed in the town guard-room. I was held in Messina till 11 May 44 then escorted back to Reggio where I was held in custody until escorted to Salerno, arriving there at approx 0330 hrs, Sunday, 4 June 44. From the station, I was taken to the Salerno guard-room by American M.P's. I was held in Salerno until being escorted to 1 Bn, 1CBRD, Avellino, ~~at~~ on 15 June 44.

R G Osmon

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

C E Senecha Capt.
Officer detailed to take the Summary of Evidence.

In the Field,
17 June 44.

MFM 6
(AFB 122)
40/PAS/136 (3438)

No G.32113 Name OSMON, R.G. | Sqn, Battery, or Company | Corps C.I.C. | Date of enlistment 23 Feb 42 | GC Badges | 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 OC Company, etc R.M.Daughney, Major.

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
									Aut forf 2 days pay
Field	16-4-42	Pte		A.A.Sec 15(1) AWL 2 days 30 mins		2 days pay	20-4-42	Maj.Gay.	
Field	3-7-42	Pte		A.A.Sec 40, Failing to comply to orders	CSM L.E. Ellis	10 days pay 10 days F.P.	6-7-42	Maj.J. D. Russell	
Field	3-8-42	Pte		A.A.Sec 15(1) AWL 14 hrs	CSM MacKinnon	1 days pay	3-8-42	Maj.J.M.Gay.	
Field	13-12-42	Pte		A.A.Sec. 15(1) AWL 13 hrs 11 mins	Sgt. Hutchins.	admonished	14-12-42	Major D.Russell.	
Field	24-1-43	Pte		A.A.Sec. 15(1) AWL 15 hrs 41 mins	Sgt. Hutchins	7 days pay 7 days F.P.	25-1-43	Maj.J.D. Russell.	
Field	26-1-43	Pte		A.A.Sec.9(2) Disobeying a lawful command (Sgt. Lockhart).	CSM Rogers, CSM Poley	14 days pay 14 days F.P.	3-2-43	Lt.-Col.C.A. Williams.	
Field	25-5-43	Pte	(1)	A.A.Sec.19, Drunkenness.	CSM Poley	admonished	26-5-43	Maj.Daughney.	
Field	17-6-43	Pte		A.A.Sec.15(1) AWL19 days 14 hrs	Sgt.Delhart	60 days Detention	14-7-43	F.G.C.M.	Aut.forf. 20 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	27-8-43	Pte.		A.A.Sec.15(1) AWL supper parade	Sgt.Munro.	3 days C.B.	28-8-43	Capt.A.J.Andrews.	
Field	28-8-43	Pte.		A.A.Sec.15(1) AWL 16 days 3 hrs and 40 mins.)	Sgt.Murphy.	27 days pay 27 days F.P.	15-9-43	Maj.J.A. MacNaughton.	
Field	9-10-43	Pte.		A.A.Sec.15(1) AWL 4 hrs 30 mins.	Cpl.Robichaud	7 days pay 7 days F.P.	13-10-43	Maj.J.A. MacNaughton.	
Field,	11-12-43	Pte.		A.A.Sec.15(1) WO&S,AWL 19 days 10 hrs 41 mins.	Sgt.Anderson, Documentary.	14 days det'n.	3-1-44	Lt.-Col.J.N. Medhurst.	
Field	17-3-44	Pte.		A.A.Sec.15(1) WO&S,AWL 2hrs. A.A.Sec.11,WO&S,neglectto obey orders, breaking curfew.	Documentary.	7 days pay 14 days C.B.	20-3-33	Major. R.D. Clendenning.	

CERTIFIED TO BE A TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY.

W.J. Cannon Capt.

.....

Officer in custody of Regt'l Books.

Exhibit D

Statement as to Character and Particulars of Service of Accused.

ARMY FORM B 296

Number.	Rank.	Name.	Regiment (or as the case may be).
G 32113	Pte.	Cowan, R.G.	1 CBR Bn, 1 CBRD

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 entered to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, previous 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 A.A. Sec. 15 (1)	5 times	9 times.
For A.A. Sec. 11	1 times	1 times.
For A.A. Sec. 9(2)	— times	1 times.
For A.A. Sec. 19	— times	1 times.
For A.A. Sec. 40	— times	1 times.
Number of instances of gallantry or distinguished conduct.	—	

There are no entries in the ~~regimental~~ 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. ~~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 NC days in civil custody, and 18 days in military custody, making a total of 18 days, of which NC days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 33

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 23 Feb 42

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

(P 25847) W1 31703/1877 10,000 12/42 A.A.E.W.Ltd. Gp.698
(D 3967) W1 32854/1287 32,000 2/43

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. G 32113 Rank Pte. Name Osmon, R.G., of 1C.B.R.Bn, 1C.B.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.
F.G.C.M.	14 July 43 In the Field	A.A. Sec. 15(1) WOAS, AWL for 19 days 14 hrs.	60 days detention	—

K.J.P.

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 22nd day of June, 1944

K. J. Connor Capt
Adj. 1 Cdo Base Reinf Am 1CBRD.

~~10. The record has served as a non-commissioned~~ [illegible] continuously, without reduction, to the present date.

~~Date of Disposition.~~

~~In the rank of~~ ..... ~~1st~~ ..... years.

~~In the rank of~~ ..... ~~2nd~~ ..... years.

~~In the rank of~~ ..... ~~3rd~~ ..... 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 sources as are available and the paragraphs concerned amended accordingly.*)

LIST OF EXHIBITS

In the case of G.32113 Pte. Osmon, R.G., 1 C.B.R.Bn., 1 C.B.R.D.

Exhibit "A" -- Certified true copy of the Record of the Declaration of a Court of Inquiry.

Exhibit "B" -- Certificate of Arrest.

Exhibit "C" -- List of kit deficiencies.

LIST OF WITNESSES

In the case of G.32113 Pte. Osmon, R.G., 1 C.B.R.Bn., 1 C.B.R.D.

WITNESSES FOR THE PROSECUTION

Lieut. W.J. Rinn,	1 C.B.R.Bn., 1 C.B.R.D.
B66023 CQMS Fooks, A.J.E.	1 C.B.R.Bn., 1 C.B.R.D.

WITNESSES FOR THE DEFENCE

NIL

STATEMENT BY THE ACCUSED

I certify having received free of charge, a copy of the Summary of Evidence, list of Witnesses, list of Exhibits and Charge Sheet.

I desire the services of an Officer to represent me at the trial.

Date 22 June 44

R L Osmon

CHARGE SHEET

To D. Prof. Osmond, J.M.

1

D-3843 Tpr John Mathew OSMUN,
17th D.Y.R.C.H. (7 Rec'ce Regt).

Army Form A.3.

Correspondence to be PINNED here.

PROCEEDINGS REVIEWED.

10/11/41

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 October, 19 41

Whereas it appears to me, the undersigned, an officer in Command of 3rd 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 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~~ detailed hereunder

* Omit if not applicable.

~~*I am unable to appoint:—~~

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

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

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

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

President.

Rank.	Name.	Regiment.
Major	G.F.Clingan, M.C.	C.H.of O. (M.G.)

Members.

Rank.	Name.	Regiment.
Captain	W.M.Arnold,	3 Cdn Div Sup Coln, R.C.A.S.C.
Captain	H.A. Mimshall	6 Cdn Fd Coy, R.C.E.
Judge Advocate	Captain A.H. Freidgut, K.C.	H.Q. 3 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 C.B. Price

(C.B.Price) Major-General.

Commanding 3rd Canadian Division.

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-3843 Trooper John Mathew OSMUN, 17th D.Y.R.C. Hussars (7rh Rec'ge Regt).	First Charge. Section 15 (1) Army Act. Second Charge. Section 24 (2) Army Act.	Guilty Guilty	Guilty Guilty 60 days detention (award stoppages £1/10/1 (appreh. exp.) £1/1/8 (Kit deficiencies) A.T. Chipman major Pres. " 29.10.41	I confirm finding and sentence C.B.P.

* 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) "C.B.Price" C.B.Price (Signed) A.T.Chipman major Pres.
(C.B.Price) Major-General. 1st/a. CHQO(96) Pres.
Commanding 3rd Canadian Division. *President*
Convening Officer (*e*) A/t Judge Advocate

(*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 29th day of October 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 * fulfilled the conditions of A.C.I. 576 of 1918.
2. The witnesses
*(3. ~~The interpreter~~) The shorthand writer
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 29th day of October 1941.

A.T. Chipman major
President of the Court Martial.
A/t Judge Advocate.

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. 576 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 30th day of October 1941.

C.B. Price. Major General
Confirming Officer. G.O.C. 3rd Can. Div.

Promulgated and extracts taken in the case of D.3843. Tpr. John Mathew Osmun.

(*a*) (Dated) Nov 1/41 (Signed) C. F. Smith
(C. F. SMITH) Lt. Col.
Officer Commanding
17th Duke of York's Royal Canadian Hussars
(7th Rec'ge. 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.

(44759) Wt. 40113—23) 400 6 41 [illegible]

FF "G"

CHARGE SHEET

The accused No. D 3843 Trooper JOHN MATHEW OSMUN of the 17th D.Y.R.C. Hussars (7th Rec'ce Reg't.), a soldier of the Canadian Army (Overseas) is charged with:

First Charge
Section 15 (1)
Army Act

Absenting himself without leave, in that he, at Haig Lines Barracks, Crookham Crossroads, Aldershot Command, absented himself without leave from 2330 hours 30 Sep 41 until apprehended by the Civil Police at the Immigration Office, Cardiff, Wales at about 1630 hours 6 Oct 41, dressed in plain clothes, thereby incurring cost of apprehension and return from Cardiff, Wales to the extent of £1-10-0.
Time absent 5 days, 17 hours.
Under close arrest from 1630 hours 6 Oct 41.

Second Charge
Section 24 (2)
Army Act

Losing by neglect his equipments, clothing and regimental necessaries, in that he was deficient of:

	£	s	d
1 pair Badges, Canada, Worsted			5½
1 " Boots, Ankle	1	2	6
1 " Braces		1	6
1 Knife, Clasp, w/Lanyard		3	4
2 Protectors, Ear drum			5
	1	8	2½

C. F. Smith
(C.F. Smith) Lieut.-Col.
Commanding 17th D.Y.R.C.H.
(7th Rec'ce Reg't.) C.A.O.

Signed in the Field
17 October 1941

To be tried by Field General Court-Martial.

C. B. Price
(C.B.Price) Major-General.
G.O.C. 3rd Canadian Division.

Signed in the Field,
24th October, 1941.

PROCEEDINGS OF A FIELD GENERAL COURT-MARTIAL

held in the Field on the 29th day of October, 1941.

Trial of D-3943 Trooper John Mathew OSMUN,
17th D.Y.R.C.H. (7 Recce Regt).

President:	Major G.F. Clingan, M.C.	C.H.of O. (M.G.).
Members:	Captain W.M. Arnold,	3 Cdn Div Sup Coln, R.C.A.S.C.
	Captain H.A. Minshall,	6 Cdn Fd Coy, R.C.E.
Judge Advocate:	Captain A.H. Friedgut, K.C.	H.Q. 3 Cdn Div.
Prosecutor:	Captain T.A. O'Hara,	17 DYRCH (7 Recce R).
Defending Officer:	Lieut J.W. Duncan,	17 DYRCH (7 Recce R).
Shorthand writer:	B-24295 Sgt H.R. Adams,	H.Q. 3 Cdn Div.

The order convening the Court, the charge sheet and the summary ofevidence are laid before the Court.

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

The accused is brought before the Court.

At 11.45 o'clock the trial commences.

The order convening the Court is read and signed by the President.

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.

Q-1 Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A-1 No, sir.

Q-2 Do you object to B-24295 Sgt H.R.Adams, acting as shorthand writer?
A-2 No, sir.

The President, members and Judge Advocate are duly sworn.

The shorthand writer is duly sworn.

The following officers under instruction are duly sworn:

Captain H.L. Boyd,	C.H.of O. (M.G.)
Captain C.H. Cook,	C.H.of O. (M.G.)
Lieut R.M. Ross,	C.H.of O. (M.G.)
Lieut H.M. Cleworth,	3 Div Petrol Coy, R.C.A.S.C.
Captain J. Balfour,	17 D.Y.R.C.H. (7 Rec'pe Regt).

At 11.55 o'clock the Court adjourn until 12.30 o'clock on the 29th October, 1941.

On the 29th October, 1941, at 12.30 o'clock, the Court re-assemble pursuant to adjournment, present the same members as on adjournment.

9

The charge sheet is signed by the President, marked "C" and annexed to the proceedings.

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

Question to the accused.

Q-3 Are you guilty or not guilty of the first charge against you which you have heard read?
A-3 Guilty.

Q-4 Are you guilty or not guilty of the second charge against you which you have heard read?
A-4 Guilty.

The accused having pleaded guilty to both charges, the provisions of Rule of Procedure 33 (B) are here complied with.

The Court is closed for the consideration of the finding.

The Court having been re-opened the accused is again brought before it.

The accused, D-3843 Trooper John Mathew Osmun, 17th D.Y.R.C.H., (7 Recce Regt), is found guilty of both charges.

The summary of evidence is read, marked "B", signed by the President, and attached to the Proceedings.

PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

CAPTAIN T.A. O'HARA, 17th D.Y.R.C.H. (7 Recce Regt) is duly sworn.

Question by the President.

Q-5 Have you any evidence to produce as to the character and particulars of service of the accused?
A-5 Yes, sir, I have certified copy of M.F.M.6, and A.F.B.2088, Statement of Character and Particulars of Service of the Accused.

The above statement is read, marked "I", signed by the President, and annexed to the Proceedings.

Q-6 Is the accused the person named in the statement which you have heard read?
A-6 He is.

Q-7 Have you compared the contents of the above statement with the regimental books?
A-7 I have, sir.

Q-8 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?
A-8 They are, sir.

Q-9 Have you any other evidence?
A-9 No, I have not.

The Defending Officer declines to cross-examine the witness.

Question to the accused.

Q-10 Do you wish to address the Court.

A-10 THE DEFENDING OFFICER ADDRESSES THE COURT IN MITIGATION OF PUNISHMENT:

The case of the accused is very similar to the case of the other we had this morning (D-3842 Tpr G.D. Meisner), in the fact that before he joined the Army he tried to join the Air Force and was turned down, and he was told that if he joined the Army it would be easier for him to get into the Air Force.

He, previous to enlistment, was separated from his wife six weeks before enlistment, and he joined the Army as a single man. He had a quarrel and joined the Army as a single man and was expecting divorce proceedings.

He left his wife with approximately $500.00 to support her, and up to the time he came to Debert he had had no correspondence with her, but he knew that his father was looking after her.

When he got to Debert he got a letter from a friend who was a neighbour telling him that his wife, who is a semi-invalid, was not very well, and that his father had died, and he wrote to his wife and they decided to try and make a go of it again.

He went to the Paymaster and made out the necessary papers, and in due course his wife received her marriage allowance plus the back marriage allowance from April, but when the accused got to England he received on the first mail a letter from his wife which stated that she had not got any allowance for the month of August, and got another letter more recently that she did not get her allowance for the month of September.

He went to the Paymaster on receipt of the first letter, and the Paymaster being away he consulted with the Pay Sergeant, and the Sergeant told him it would be much faster to write to his wife and give her the address where to write to in Ottawa, which he did, and I have a letter, a copy of a letter, stating that there was an investigation on her allowance; that was some time ago, and she has not had any further allowance so far as he knows up to date.

He was, as a civilian, in the Merchant Service, and he thought by going to the Merchant Navy that he might be able to look after his wife without depending on anyone else to do it for him.

He had the same intention as Meisner that if he could not get a job he was coming back to the unit.

I would like you to bear in mind that he has a clean conduct sheet, and that he has had an education, a very good education, he was graduated from Public School in the States, and from my own point of view, I have had experience working with him, he was with me on a scheme and proved to be an excellent D.M. and a good driver and was careful and shows a definite sense of responsibility, and with these remarks I close my address.

THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE.

Ex "H" Attachment Page 1/3

Summary of evidence in the case of No. D 3843 Trooper JOHN MATHEW OSMUN of the 17th Duke of York's Royal Canadian Hussars (7th Rec'ce Reg't.) C.A.O.

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

1st Witness for the Prosecution

D 3372 Tpr. Pelletier, J.R. of the 17th D.Y.R.C. Hussars (7th Rec'ce Reg't.) C.A.O. states:-
At Haig Lines Barracks on the night of September 30th, 1941 Tpr. Osmun, J.M. was not in his bed at Lights-Out.
Question: Do you sleep near Tpr. Osmun?
Answer: Yes, I sleep opposite to him.

The accused declines to cross-examine this witness.

J.R. Pelletier
D 3372 Tpr. Pelletier, J.R.

2nd Witness for the Prosecution

D 3092 Cpl. Brennan, J.G. of the 17th D.Y.R.C. Hussars (7th Rec'ce Reg't.) C.A.O. states:-
At Haig Lines Barracks on 11 October 1941 I was Guard Commander when at 1508 hours the accused Tpr. Osmun, J.M. was delivered to me by D 3171 Sgt. Newbury, W.F. Tpr. Osmun was dressed in Blue Civilian Suit Coat, Khaki trousers and blue Regimental Sweater. He was searched by Sgt. Newbury and put in the Detention Room.
The accused declines to cross-examine this witness.

J.G. Brennan
D 3092 Cpl. Brennan, J.G.

3rd Witness for the Prosecution

D 3559 Tpr. Henders, B.K. of the 17th D.Y.R.C. Hussars (7th Rec'ce Reg't.) C.A.O. states:-
At Haig Lines Barracks on the night of September 30th, 1941 Tpr. Osmun, J.M. was not in at 2230 hours. I was not in charge of the Tattoo, but I am the Squadron Orderly Room Clerk and sleep opposite Tpr. Osmun. I looked again in the morning and he was still not in.

The accused declines to cross-examine this witness.

B.K. Henders
D 3559 Tpr. Henders, B.K.

D 76757 L/Cpl. A. Astrof	- Army Form B 252	- Appendix	"A"
P.C. Henry Wood, A.R.D.	- A.F.O. 1618	- "	"B"
Sgt. L. Brint	- 163 (I) (M) AA	- "	"C"
Lieut. M.C. Byers	- Certificate showing Cost of Apprehension	- "	"D"
B 21172 Sgt. J.R. Frost	- CMHQ 1000:74	- "	"E"

Written statements of these witnesses evidence purporting to be signed by them have been read to the accused and are included in this summary of evidence.
Having regard to the exigencies of the service the attendance of these witnesses cannot in my opinion be readily procured.

T.O'Hara
Captain T.A. O'Hara

The accused does not demand the attendance of these witnesses for cross-examination.

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

Certified that Rule of Procedure 4 (C) (D) (E) (F) and (G) have been complied with.
Taken down by me in the presence and hearing of the accused this 17th day of October 1941 at Haig Lines Barracks.

T.O'Hara
Captain T.A. O'Hara

10

A

CHARGE

Army Form B 252
(See King's Regulations)

7th Recce Bn. Regiment

A Sqn. - 1st Tp. Battery / Squadron / Troop or Company

CHARGE against No. D 3843 Rank Pte.

Name Osmun, J.

Place London Date of Offence 11 Oct41.

OFFENCE W.O.A.S. was A.W.L. from ..... until apprehended by the Civil Police at the Immigration Office, Cardiff at about 1630 hrs 6 Oct.41.

D.A.P.M.
CANADIAN MILITARY POLICE
LONDON AREA

Names of Witnesses :— P.C.Henry Wood. Cardiff Civil Police

L/Cpl. Astroff, Canadian Provost Corps.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

Q6386. Wt.W28440/806. 1,000,000. 10/40. E. & H., Ltd. G487/47.

1/6

The Statement of **EVIDENCE** in the case of
D-3843 Pte. Osmun, J.
7th Cdn. Recce Bn.

Sir:

At London at about 0915 hrs. I was on duty at No. 6 Cdn.Prov. Coy., H.Q., on 10Oct.41 when acting on instructions received I proceeded to Cardiff Police Stn., where the a/m soldier was given into my custody. He had been apprehended by Constable Wood, H., at 1630 hrs. on the 6 Oct.41 at the Immigration office at Cardiff as an absentee. I then proceeded to No. 6 Cdn.Prov.Coy., H.Q., where I handed him over to the N.C.O.i/c cells to be detained. Statements from Civil Police attached.

London
11 Oct.41.

A. Astroff .....L/Cpl
(D-76757 Astroff, A.)
Cdn.Prov.Corps.

Sir;

I was N.C.O. i/c cells when the a/m soldier was brought in to be detained.

London
11 Oct.41.

.....L/Cpl
(L-140 Snider, M.E.)
Cdn.Prov.Corps.

REMARKS

No Complaints

DESCRIPTIVE RETURN OF † Private John Matthew O'Connor No. D. 38443 who was apprehended at 4-30 p.m. (hour) on the 6th day of Oct 1941 and was committed to confinement at Law Courts, Cardiff on the 6th day of October 1941 as a Deserter (or Absentee without leave) from the 11th Bn. of the Duke of York's Royal Canadian Hussars Regiment of Fleak.

Age 24 years 2 Height 5ft — feet — inches
Complexion Sandy Hair Brown Eyes Brown
Marks In uniform or plain clothes

Probable date and place of attestation	
Probable date of desertion or beginning of absence and from what place	1st October 1941. Fleak.
Name, occupation and address of the person by whom or through whose means the Deserter (or Absentee without leave) was apprehended and secured	Henry Wood. Constable A.R.D.

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.

Dated 3 Upon the 6th October that the prisoner was seen at the Empress Hotel Aberdare detained. At 5pm on the 6th Oct. he was told that he was a deserter. He said that he was not aware that he was a deserter. When questioned he admitted that he was a deserter from the Fleak Soldiers in any way. He may have been a deserter from the Fleak Soldiers in any way.

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 not a deserter from the before-mentioned Corps.

Constable Griffith — Signature
Cardiff — Residence
Cardiff — Post Town
of Committing Magistrate
9th October 1941 — Date of Signature

John M. O'Connor — Signature of Prisoner
H. Wood. ARD — 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 is not forthcoming, and that the case was adjourned until this ____ day of ____ for the purpose of obtaining such evidence.

Signature
Residence
CANADIAN MILITARY POLICE
LONDON AREA
Post Town
Date of Signature
Magistrate.

† 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

Army Form Q.1618.

PART II.

This portion of the Form, after the Magistrate has committed the soldier and completed the recommendations as to reward, will be handed by the Clerk of the Court to the Police, who will add overleaf a statement of any expenses incurred by them.

Apprehension of No. ____ of ____

Regiment at ____ on ____ by ____

who was committed as a Deserter (or Absentee without leave) on the ____

RECOMMENDATION FOR REWARD.

I RECOMMEND* ____

Address ____

for a reward of ____

Signature of Committing Magistrate.

Date.

*The Magistrate will insert the name and address (in full) of the person for whom the reward is recommended, and the amount (5/-, 10/-, 15/-, or 20/-) which in his opinion should be granted in this particular case, having regard to the following rules :—

1. When soldiers are apprehended in uniform near their quarters it is considered that as a general rule 5/- is a sufficient reward. Not more than 10/- will be allowed in any case where the soldiers were in uniform.

2. When soldiers are apprehended in plain clothes, at a distance from their units, and after having been absent for some time, the reward may be increased to 10/- or 15/- according to the nature of the cases and the trouble incurred in apprehension. A reward in excess of 15/- will seldom be granted.

3. The reward of 20/- should be strictly reserved for cases where superior intelligence has been displayed in apprehending men in plain clothes, or under difficult or exceptional circumstances.

Rewards and expenses attendant upon apprehensions will be paid by the Command Paymaster of the Command or District in which the soldier's Unit is stationed.

4. No reward can be authorised if the Deserter or Absentee voluntarily surrendered, or if it shall appear that he was in collusion with the person who apprehended him, or if the apprehended man was not a Deserter or Absentee.

The following Statement of expenses (if any) incurred by the Police and chargeable to Army Funds should be certified by a Superintendent or Officer in charge of a station.

No expenses incurred in conveying a Deserter or Absentee from the Court to prison should be charged to Army funds. Such expenses can be included in the claim made on the Prison Commissioners.

The total amount allowed on account of expenses before committal will not together with the reward exceed 40/-.

I CERTIFY that the following expenses were incurred by the_____

Police in connection with the apprehension of_____

_____ and are

payable to_____

_____ (Superintendent or Officer i/c Police Station at

Date_____ _____

AUTHORITY for the PAYMENT of a REWARD. (*For Army use only.*)

The Command Paymaster_____ is hereby authorised to pay to_____ being the person recommended by the Committing Magistrate, a reward of_____ for the apprehension of_____

Date_____ _____ (O.C. Unit)
Officer Commanding.

Where no reward is authorised though one was recommended by the Magistrate, or where the reward authorised is less than that recommended, a brief explanation will be given below :—

Army Form O.1618.

IMMEDIATE.

PART I.

DESCRIPTIVE RETURN of a Deserter or Absentee without Leave.

INSTRUCTIONS FOR THE GUIDANCE OF MAGISTRATES.

(1) When a man is apprehended by the Civil Power as an absentee without leave, or as a deserter, if the information tendered leaves no doubt in the mind of the Magistrate that the prisoner is a soldier, this return should be completed and given to the Police to hand to the escort on arrival.

(2) To avoid delay in the arrival of the escort a telegram stating the Number, Rank, Name and Unit of the soldier should be sent by the Police, as soon as the man is committed, to the Officer Commanding the soldier's Unit. The place where the escort is required to attend should be stated, also whether the soldier *surrendered* or was *arrested*.

(3) Any recommendation for a reward should be made on Part II of this return.

(4) The Court fees chargeable for Descriptive Returns should be claimed periodically from the Command Paymaster of the Command in which the Court is situated.

(5) The stations of all Units are shown in the Monthly Army List, as are also the Depots of Corps.

In the case of doubt as to the location of a particular Unit reference should be made to the nearest O.C. Troops. Where the soldier's Unit is stationed overseas (outside Great Britain, Northern Ireland District, and the Channel Islands) the telegram for an escort should be despatched to the O.C. Depot, who will take all necessary action for its provision.

(*10954) Wt.12205/236 10,000 5/39 A.& E.W.Ltd. Gp.676 Form/O.1618/52
(*12207) Wt.30225/1716 50,000 11/39 " "

C

19

CERTIFICATE IN ACCORDANCE WITH SECTION 163 (I) (m) of the ARMY ACT.

I certify that the person whose description is given below was arrested (~~or surrendered~~) at Cardiff at 4.30 p.m. on the 6th day of October 1941.

Regimental particulars of officers or soldier referred to above.

(No. D. 3843.
(Rank. Private
(Name. John Matthew OSMUN
(Unit. 17th Duke of York, Royal Canadian Hussars.

Description.

(Age. 24.
(Height. 6'
(Complexion. swarthy.
(Hair. brown.
(Eyes. blue.
(Marks.

Signature of officer of police in charge of police station where the above named person was taken or placed in costody, on arrest or surrender

J. Brint. Sergeant.
In charge of Central Police Station. Cardiff

D.A.P.M.
CANADIAN MILITARY POLICE
LONDON AREA.

a.t.s.

21

D

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

Regt. No. D-3843

Rank Trp.

Name Osmeund J.M.

Regt. Duke of York Roayl Cdn. Hussars.

Unit:

The following expenses were incurred in apprehending and returning the H/R soldier to his unit from Cardiff.

DATE	PARTICULARS	AMOUNT		
	½(Portion)			
11 Oct.41	Escort return fare from London to Cardiff	0.	11.	9.
	Prisoners single fare to London from Cardiff	0.	11.	9.
	Prisoners Single fare from London to			
	Escorts expense for ~~xxxx~~ meals ~~xxxxxxxx~~ and meals for the prisoner. ½ (Portion)	0.	6.	6.
	TOTAL £	1.	10.	0.

I certify that the above statement of expenses is correct and that the amounts are fair and just.

M. C. Byers Lt

for O.C. No 6 Prov. Coy.
Canadian Provost Corps.

23

C.M.H.Q. 1000 : 74
40/P & S/805

CANADIAN PROVOST CORPS

FILE REFERENCE

6/30/8

COMPANY. S.I.D. FORMATION. C.M.H.Q. CORPS.

LOCATION. London DATE. 11th Oct. 1941

SUBJECT: Re, D-3843 Trooper Osmun J.M. D. of Y. R.C.H. 7th Recce.

HEADQ. 14 OCT 1941 CDN "A"

Absentee

(1)

File Numbers

SID/0/8

1. With reference to the above, on the 11th of October 1941 I went to 30 Henrietta St, and obtained the following statement.

2. I have been cautioned by Pte. Reid of the Canadian Provost Corps, that I do not have to make a statement, unless I wish to do so. I understand that anything I say will be taken down in writing, and may be used as evidence. I sign here to show that I understand this. John M. Osmun.

3. I was with the 17 D.Y.R.C.H. 7th Recce. stationed at Crookham crossroads. I received a letter from my wife that she was not receiving her allowance, and I went to the Paymaster and he could not give me a satisfactory answer. My wife could not live for three or four months without any money, so I decided to try to join the Merchant Navy, so that I could send her the money to live on. I travelled by bus and train to Bristol. I found out that there were no jobs in Bristol, in the M.N. so I stayed in uniform and went to Cardiff. After looking around there for a day, I bought a suit jacket and a pair of shoes off a sailor, and hid my uniform. I went down to the Shipping Officer and secured a berth on a Norwegian freighter, which was short of hands. I did not know where it was going and I was handed a slip of paper, to get stamped by the Immigration authorities. When I went there I was arrested by the Immigration. I had about three pounds in money on me when I left my Unit. I paid my own way on this trip, and did not commit any civil offences. This statement has been read over to me, and it is true.

Signed.....John M. Osmun.....

Previous Report

FIRST

4. In view of the above, I respectfully request that this file be concluded.

.....R.W. Reid.....Pte..
R.W. REID B-94524
S.I.D.

RECEIVED OCT 16 1941 3rd Div.

CONCLUDED

(2)

Cdn.Corps "A"

1. Forwarded for your information, please

A D Cameron
(A. D. Cameron) Lt. Col.
Deputy Provost Marshal,
Canadian Military Headquarters.

Diary Date

(3)

3 Cdn Div
Forwarded for your information.
J. Coleman Capt.
for D.A.A.G. Cdn. Corps.

OCT 15 1941

Ex I Charge

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D 3843	Trooper	JOHN MATHEW OSMUN	17th D.Y.R.C.Hussars (7th Recce Regt)CAC

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 to court with this statement but not annexed to the proceedings.

† See para. 675, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, precedence 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	NIL	times	NIL	times.
For		times		times.
For		times		times.
For		times		times.
For		times		times.

~~Number of instances of gallantry or distinguished conduct.~~ 68b

68b

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.~~ 68d 68d

3. The accused is not under sentence at the present time, ~~or The accused at the present time is under sentence for~~ 68d

~~beginning on the~~ day of 68d

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and Twenty days in military custody, making a total of Twenty 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 24

6. The date of his ~~commission~~ / attestation specified in his record of service / attestation paper is 9 April 1941 68b

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 6 Months 20 Days

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 ~~or is in possession of or entitled to (state any military decoration or reward)~~ 68b 68b

~~11. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~ 68b 68b

~~12. (In the case of an officer.) The accused holds in the army the rank of dated~~ 68b

~~and in his regiment (or corps or department) the rank of dated~~ 68b

(*19140) Wt.30249/902 75,000 12/40 A.& E.W.Ltd. Gp.698

PMS

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.3843 Rank Trooper Name JOHN MATHEW OSSEN of 17th.D.Y.R.C.H. (7th. Rec'oe. Reg't.) 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 29 day of October 1941

(C. F. SMITH) Lt. Col.
Officer Commanding
17th Duke of York's Royal Canadian Hussars
(7th Rec'oe. Reg't.) A.F.

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 NIL 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 sources as are available and the paragraph concerned amended accordingly.*)

COPY

17TH DUKE OF YORK'S ROYAL CANADIAN HUSSARS
(7TH REC'CE REG'T) A.F.

M.F.M. 6
A.F.B. 122
300M—8-39 (1702)
H.Q. 1772-45-18

No. D3843 Name OSMUN JOHN MATHEW

Sqn., Battery, or Company } A

Corps

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 } 8 APR 41

Sheet No.

G.C. Badges

Service or Proficiency Pay

Signature O.C. Company, etc. } [illegible]

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

J O Heuer

CAPTAIN & ADJUTANT

17TH DUKE OF YORK'S ROYAL CANADIAN HUSSARS
(7TH REC'CE REG'T) A.F.

(P.T.O.)

17TH DUKE OF YORK'S ROYAL CANADIAN HUSSARS
(7th REC'CE REG'T.) C.A.C.

29th October 1941.

Officer Commanding,
17th D.Y.R.C.Hussars
(7th Rec'ce Reg't.) C.A.C.

This is to certify that I have, this day, examined the undermentioned Trooper and he is fit to undergo trial by Court Martial.

D.3843 Tpr. OSMUN, J.M.

(J. Balfour) Capt. RCAMC
Medical Officer
17th D.Y.R.C.Hussars
(7th Rec'ce Reg't.) C.A.C.

4/B-158

Pte OSSELLE DA

SCHEDULE.

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

Accused: K.46606 Pte Dennis Alexander OSSELLE - CIC - 4 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 10(4)	Guilty	Guilty	
2nd	AA Sec 8(2)	Not guilty	Guilty	found guilty of offering violence to a superior officer but there is insufficient evidence to prove that he used a knife.
3rd		24 Oct 44		
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 Nil 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 11 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 imprisoned with hard labour for one year.

(Sgd) JWB Judge-Advocate, if any. 24 Oct 44 Date awarded. (Sgd) J.M. 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(2). 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 findings but comute the sentence to read "to undergo detention for one year" and I confirm the sentence as so commuted.

~~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) (J.E. Ganong) Brigadier
Date 26 Oct 44 Commanding "D" Group, Cdn Rft Units
Confirming Officer.

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

Accused.	Date.	Signature of Offr.
K 48606 Pte. OSSELLE, Dennis Alexander	27 Oct 44 D.O. 273 d/30 Oct 44	(A.J. Hefsler) Lt & A/Adjt. 4 Cdn InfRft Unit, C.A.S.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED. JWB

RECORDED AT CMHQ IN AB 160, 413-150

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA53) 40/1 & B/1698 (6/44) 4/388

(Convened by Order of Brigadier J.E. Ganong, ED Comd "D" Gp CRU dated 23 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/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K.48606	Pte		Dennis Alexander	OSSELLE	CIC 4 CIRU

PROCEEDINGS REVIEWED 30 OCT 44 JCC

Tofus Finniss Smith Lt Col 1 Nov 44 REVIEWING OFFICER, JAG BRANCH D.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date) 24 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 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) JWB The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and JWB 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 1340 hours trial commences. JWB

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

~~The Interpreter is sworn.~~(1) Do you object to B.112263 Pte J. Murphy as shorthand writer? Ans No. JWB 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) JWB

(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.M. Bowman	H.B. Highrs 3 CDN INF BDE
Member	Capt.	F.L.J. Martin	Q.O.R. 3 CDN INF BDE
Member	Lt.	C.C. Leask	C.I.C. 1 CDN INF BDE
Judge-Advocate			JWB
Prosecutor	Lt.	W.S. Bury	H.P.E.R. H CDN INF BDE
Defending Offr	Lt.	G.L. Pallett	H.P.E.R. H CDN INF BDE

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 K.48606 Pte. Dennis Alexander OSSELLE before arraignment make(s) (no) (a) plea. JWB JWB (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 RP 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. JWB

(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 B, C, D and E JWB

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. JWB

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 'D', 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 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 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. As a witness under oath. Do you intend to call witnesses on your behalf? Ans. 3 statements by two soldiers only. 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 1st and 2nd 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 'H' and Ex 'J' 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 (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 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 B was used, the diagonal initialed line should not have been ruled through it.

J. M. Dawson. Major.

Ex. H

CHARGE SHEET

The accused, K 48606 Private Dennis Alexander OSSELLE, Canadian Infantry Corps, on the strength of No 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE — WHILE ON ACTIVE SERVICE, Breaking out of Barracks,

Section 10(4) Army Act

in that he,

In the Field, did break out of barracks at approximately 2245 hours 13 October 1944 after having been warned that he was confined to barracks.

SECOND CHARGE — WHILE ON ACTIVE SERVICE, Offering violence to his Superior Officer,

Section 8(2) Army Act

in that he,

In the Field, at approximately 2245 hours 13 October 1944 did approach B 113219 L/Cpl. Haight, B.J. of the C.P.C. with an open knife in his hand and yelled, "provost Dh, I'll fix the son-of-a-bitch, send him out here to me," or words to that effect and attempted to strike the said N.C.O. with the knife.

(J.B. Weir) Colonel
Commander
4 Cdn Inf Rft Unit.

IN THE FIELD
19 OCTOBER 1944

To be tried by Field General Court Martial.

(J.E. Ganong) Brigadier
Commanding
"D" Group, Cdn Rft Units
Convening Officer

In the Field
23 Oct 44

Ex. B

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1097 (2803)

(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.48606	Pte		Dennis Alexander	OSSELLE	CIC 4 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) 23 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.
Major	J.M. Bowman	48 Highrs	3 CIRU

MEMBERS.

Rank.	Named or detailed. RP 106.	Unit.
A Captain	to be detailed by Commanding Officer	3 CIRU
A Lieutenant	to be detailed by Commanding Officer	1 CIRU

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.) — (Signed personally. RP 105 fn 2.) — Brigadier (Rank.)

Date 23 Oct 44 — 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.)

AWD

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the pars in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)
(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA*) (*RP 40 fn 10*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(D).*)
(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)
(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).*)
(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (*KR Can 557.*)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.
(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (b).*)
(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

Ex. C.

Medical Officer's Certificate. 40/25
K.R. (Can.), para 557.

I certify that I have this morning examined No. K.48.606.....

.... Pte. Osselle .... D ..... of. No. 4. C.L.R.A. .....

and in my opinion, he is. Fit ..... to undergo trial by Court Martial.

Station.... Field .....

Date..... 24. Oct. 1944 ..... (Sgd.). D. Bruce Lee Capt. [illegible]
(Medical Officer)

(Canadian Reinforcement Units Routine Order No. 3, para 27, d/6 Jan 42)

Ex. E Page 1

Evidence in the case of K-48606 Private Dennis Alexander Osselle, Canadian Infantry Corps, on the strength of 4 Canadian Infantry Reinforcement Unit.

FIRST WITNESS FOR THE PROSECUTION

B-113219 L/Cpl Haight, B.J. on the strength of No. 9 Provost Company, having been duly sworn, is questioned as follows:

Q. 1 Would you tell the Court what happened at exactly 2245 hours on the night of 13 October 1944 in the connection with K-48606 Pte. Osselle, D.A.

A.1 While on my tour of duty in Aldershot on the night of 13 October 1944, I was standing in front of Bonnie's Cafe on Wellington Street talking to a group of soldiers when Pte. Osselle, D.A. approached me and said, "Provosts, eh, I'll fix the son-of-a-bitch, send him out to me". While saying that he struck at me with an open knife and I stepped away from him. I couldn't place him under arrest at the time because of a group of soldiers that were under the influence of liquor which didn't look very friendly, so we returned to the police station at Aldershot where we got some of our other Provosts to stand-by and we returned and placed Pte. Osselle, D.A. under close arrest. We then escorted him to No. 4 C.I.R.U. Guard Room receiving a live body receipt. From his person we recovered the knife which was kept as evidence.

Q.2 Do you recognize this knife?
A.2 Yes, this is the knife.

Q.3 Where did you get the knife?
A.3 We took it out of Pte. Osselle's pocket.

Q.4 At what time did you take the knife?
A.4 Approximately 2245 hours.

Q.5 How much time elapsed between the time the alleged assault took place and the time he was put under arrest?
A.5 Approximately 2250 hours.

The witness is now questioned by the Defence.

Q.6 What time of night did you say that you first saw the accused?
A.6 It was approximately 2245 hours.

Q.7 Where abouts were you standing?
A.7 In front of Bonnie's Cafe on Wellington Street.

Q.8 Was it a bright night?
A.8 It was fairly bright.

Q.9 Was there any artificial light at all?
A.9 Yes, there are a few lights on that street besides the light from the Cafe.

Q.10 Were you alone when you were standing there?
A.10 I was with L/Cpl. Robb.

Q.11 You were talking to a bunch of men and what were you talking about?
A.11 They had been raising a little trouble in Bonnie's Cafe and we were standing there, the lady had asked us to go out to stop them. We talked to them and more or less tried to quieten them down.

JHB

FIRST WITNESS FOR THE PROSECUTION (Continued)

Q.12 Did the accused rush at you with an open knife?
A.12 He walked up to me through a bunch of soldiers that were standing there and said, "Provosts, eh, I'll fix the son-of-a-bitch, send him out here to me".

Q.13 "Send him where to me?"
A.13 I was standing just off the street.

Q.14 What did he do then?
A.14 While he said this he struck at me with an open knife.

Q.15 How did you know the knife was open?
A.15 I saw the blade of the knife.

Q.16 Where were the rest of the soldiers?
A.16 They were standing behind me, to my right and left.

Q.17 Where abouts was the other Provost, L/Cpl. Robb?
A.17 He was beside me among the group.

Q.18 Couldn't you have very easily taken the knife away at that time?
A.18 We could have taken the knife then, sir, but if we had, it might have meant a lot of trouble.

Q.19 But the accused was not part of the original soldiers that you were talking about?
A.19 That's right sir.

Q.20 Did the accused offer any resistance when you arrested him?
A.20 None at all.

The witness is questioned by the Court?

Q.21 How many Canadian soldiers had been making trouble in this Bonnie's Cafe?
A.21 We were trying to quieten down about nine men that were in Bonnie's Cafe, but were at this time on the side-walk.

Q.22 Had the accused been drinking?
A.22 He seemed to be in a rage and appeared to me to have been drinking.

Q.23 While you were going to the police station and returned, the accused made no attempt to get away?
A.23 No.

Rules of Procedure 83 (b) have been complied with.

J.M. Bowman, Lieut.

SECOND WITNESS FOR THE PROSECUTION

M-60048 L/Cpl. Robb, A. on the strength of No. 9 Provost Company, having been duly sworn, is questioned as follows:

Q.1 Will you tell the Court in your own words what happened between yourself and the accused, on the night of 13 October 1944?

JMB

SECOND WITNESS FOR THE PROSECUTION (Continued)

A.1 This man came up to us and said, "Provosts, eh, I'll fix the son-of-a-bitch, send him out to me". With that he went up to my partner on the beat, and took a jab at him with a knife. We then went down to the police station and told other provosts to stand-by while we made the arrest. This we did do and took the man into Aldershot Police Station and then escorted him to his unit Guard Room.

Q.2 Do you recognize this knife at all?
A.2 Yes, that is the knife that I took off the prisoner.

The witness is questioned by the Defence.

Q.3 Do you recognize this knife as the knife that came out of his pocket at the Police Station?
A.3 Yes sir.

Q.4 Do you remember having seen that knife before?
A.4 No sir.

Q.5 Did you actually see the accused strike at your partner with an open knife?
A.5 No sir. I saw his hand go out to strike, but did not see the knife in his hand.

Q.6 Did your partner tell you that he had been struck with a knife?
A.6 Yes sir, he did.

Q.7 Approximately when?
A.7 When we started back to the Police Station, he said that he had felt the knife but didn't know where it actually hit him. He thought it was on his arm.

Q.8 How were you dressed?
A.8 We were dressed in heavy top-coat .

Q.9 A knife would show up easily on that type of material?
A.9 No sir.

Rules of Procedure 83 (b) have been complied with.

J.M. Dawson Major

FIRST WITNESS FOR THE DEFENCE

M-38606 Pte. Osselle, D.A., C.I.C., on the strength of 4 Canadian Infantry Reinforcement Unit, having been duly sworn, is questioned as follows:

Q.1 Will you tell the court in your own words what happened around 2230 hours, 13 October 1944?
A.1 Together with M-195559 Pte. Reid, C.A. and M-3695 Pte. Read, D., we were in Bonnie's. We had a sandwich and a cup of tea. When we finished we went out. We saw these provosts arguing with these other boys and so we listened, and then I stepped in and said, "Provosts, eh," and then I told them that I would take any one of them on to a fight.

Q.2 Did you start to fight with any of the Provosts?
A.2 No, sir.

JMB

FIRST WITNESS FOR THE DEFENCE (Continued)

Q.3 Did you have a knife in your hand in saying this?
A.3 No, sir.

Q.4 Did you make any attempt to draw a knife out of your pocket?
A.4 No sir.

Q.5 Then what happened?
A.5 Then I kept yelling at him to come on to take a fight. But they went away and I told Reid that they were probably going for reinforcements. So I didn't think they would do anything about that. We were going back to camp for roll call and just as we were going back, they, the Provosts, came and placed me under close arrest.

There is no cross-examination by the Prosecution.

The witness is re-examined.

Q.6 You didn't make any attempt to strike the Provosts?
A.6 No sir.

Rules of Procedure 83 (b) have been complied with.

J.M. Lawson Major

M-60048 L/Cpl. Robb, A. and B-113219 L/Cpl Haight, B.J. were recalled and statements of H-195559 Pte. Reid, C.A. and M-3695 Pte. Read, D. were read. After reading the statements, the Provosts were asked if there appeared to be any joke in the accused's manner. The answer by both Provosts was "no".

Question by the Court to M-60048 L/Cpl Robb, A.

Q.1 Was the accused fighting mad?
A.1 I wouldn't say fighting mad, but he was game for a fight.

R.P. 83 B has been complied with
J.M. Lawson Major

Statement by the Defending Officer:

Speaking of the second part of the second charge, the only evidence submitted to the Court by the Prosecution was submitted by L/Cpl Haight who claims that in dusk light he did get a glance of the blade of a small pen knife, although he claims and L/Cpl. Robb claims that they were standing together. L/Cpl. Robb admitted to the Court that he did not see the knife. The two statements of H-195559 Pte. Reid, C.A. and M-3695 Pte. Read, D. claim that although the accused mentioned something about having a knife fight, at no time did he draw a knife from his pocket. The seriousness of this charge lies in the fact that he did attempt to strike the N.C.O. with a knife and I fail to see with the evidence before the court how the Prosecution could substantiate this charge.

J.M.B.

Statement by the Defending Officer. (Continued)

Furthermore, both witness for the Prosecution admit that the accused was alone for a period of five minutes. I think that any rational human being if he had been using a knife would have got rid of any evidence in that period of time.

The Prosecution makes no statement.

Case closed.

J.H. Bowman Major

EX. D

SUMMARY OF EVIDENCE

Summary of Evidence in the case of K 48606 Private Dennis Alexander OSSELLE, Canadian Infantry Corps, on the strength of No 4 Canadian Infantry Corps, 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

C 41291 Sgt Hebert, W.W.J., Canadian Infantry Corps, on the strength of No 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am C 41291 Sgt Hebert, W.W.J., of "D" Coy, 4 C.I.R.U. On 13 Oct 44 I was acting as Draft Sergeant in "D" Coy. I warned the draft, including the accused, K 48606 Pte Osselle, D.A., whom I now recognize, that they were confined to camp the night of 13 Oct 44, as they were being on draft the next morning.

(W.W.J. Hebert) Sgt C 41291

The accused declines to cross-examine this witness.

SECOND WITNESS

For the Prosecution

B 113219 L/Cpl Knight, B.J., C.P.C.

Pursuant to Overseas R.O. 957(4) and R.P. 4 (g), a statement of this witness, evidence purporting to be signed by him has been read over to the accused, K48606 Pte Osselle, D.A., and is included in this Summary marked Exhibit "B". This witness will also present as Exhibit "A" one pocket knife. I certify that the attendance of this witness cannot be readily procured, owing to the exigencies of the service and to the expense and loss of time involved.

The accused does not demand the attendance of this witness for cross-examination.

(A.J. Geisler) Lt,
Officer Detailed to Take Summary.

THIRD WITNESS

For the Prosecution

M 60048 Pte Acpo, A., C.P.C.,

Pursuant to Overseas R.O. 957(4) and R.P. 4(g), a statement of this witness, evidence purporting to be signed by him has been read over to the accused, K48606 Pte Osselle, D.A., and is included in this Summary and marked Exhibit "C". I certify that the attendance of this witness cannot be readily procured, owing to the exigencies of the service and to the expense and loss of time involved.

The accused does not demand the attendance of this witness for cross-examination.

(A.J. Geisler) Lt,
Officer Detailed to Take 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 in evidence."

Ex. D

SUMMARY OF EVIDENCE

Summary of Evidence in the case of K 48606 Private Dennis Alexander OSSELLE, Canadian Infantry Corps, on the strength of No 4 Canadian Infantry Corps, 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

C 41291 Sgt Hebert, W.W.J., Canadian Infantry Corps, on the strength of No 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am C 41291 Sgt Hebert, W.W.J., of "P" Coy, 4 C.I.R.U. On 13 Oct 44 I was acting as Draft Sergeant in "P" Coy. I warned the draft, including the accused, K 48606 Pte Osselle, D.A., whom I now recognize, that they were confined to camp the night of 13 Oct 44, as they were going on draft the next morning.

(W.W.J. Hebert) Sgt C 41291

The accused declines to cross-examine this witness.

SECOND WITNESS

B 113219 L/Cpl Haight, H.J., C.P.C.

For the Prosecution

Pursuant to Overseas R.O. 957(4) and R.P. 4 (g), a statement of this witness' evidence purporting to be signed by him has been read over to the accused, K48606 Pte Osselle, D.A., and is included in this Summary marked Exhibit "B". This witness will also present as Exhibit "A" one pocket knife. I certify that the attendance of this witness cannot be readily procured, owing to the exigencies of the service and to the expense and loss of time involved.

The accused does not demand the attendance of this witness for cross-examination.

(A.J. Geisler) Lt,
Officer Detailed to Take Summary.

THIRD WITNESS

M 60048 Pte Robb, A., C.P.C.,

For the Prosecution

Pursuant to Overseas R.O. 957(4) and R.P. 4(G), a statement of this witness' evidence purporting to be signed by him has been read over to the accused, K48606 Pte Osselle, D.A., and is included in this Summary and marked Exhibit "C". I certify that the attendance of this witness cannot be readily procured, owing to the exigencies of the service and to the expense and loss of time involved.

The accused does not demand the attendance of this witness for cross-examination.

(A.J. Geisler) Lt,
Officer Detailed to Take Summary.

The accused was cautioned as follws:- "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."

Ex. "D"

The accused declines to make a 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),(f), and (g) have been complied with.

A. J. Geisler

(A.J. Geisler)Lt & Asst/Adjt
Officer detailed to take Summary.

IN THE FIELD
19 OCTOBER 1944

Jdd D

EX. F.

I, M-3695 Pte Read, D. was standing outside Bonney's Cafe Aldershot at approximately 2200 hrs the 13th of Oct 1945 in company with H-179557 Pte Reid C.A. and K-48606 Pte Orelle D.A. We had all just come out of Bonney's Cafe, which the Provost Corp. were helping to clear out, and discovered the Provosts having an argument with two other Canadian soldiers outside. Pte. Orelle after listening to the argument jokingly said words to the effect that he would take the Provosts on two at a time to a knife fight.

In my presence I saw no knife drawn by Pte Orelle and he did not make any move to

Ex. F Page 2

interfere with the Provost Corps men, but merely made the remark as a joke;

D. Read

M3695.

14 Oct. 44

Evidence taken by me this 14th day of October 1944 at 4 C.I.R.U.

A. H. Stephen
Lt.

fld B

Ex. "C" Page 1

9 H-19539 Pte Reid C.A. was standing outside Bonney's Cafe, Aldershot, at approximately 2200 hrs the 16th of Oct. 1944 in company with M-3695 Pte Read, D. and K-48606 Pte Oselle, D.A.

We had all just come out of Bonny's Cafe, which the Provost Corps were helping to clear out at closing time, and discovered the Provosts having an argument with two other Canadian soldiers outside.

Pte Oselle after listening to the argument jokingly said words to the effect that he would take the Provosts on two at a time in a mock fight.

In my presence I saw no knife drawn by Pte Oselle, and he

did not make any move to interfere with the Provost Corps men, but merely made the remark as a joke. Page 2

Ex. "G"

C G Reid
H195559

Evidence, taken by me this 14th day of October 1944 at 4 C.I.R.U.

A H L Stephen
Lt

JWB

Ex. "J"

No. K 45606 Name Osselle D. A. Sqn, Battery, or Company Corps C I C Date of enlistment 26-11-42 GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40/PAS/136 (5413)

Date of last entry in Company Conduct Sheet No. and date of last drunk (1) 30-1-43 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
Field	25-6-43	GNR.		A.W.L. FROM 0600 HRS 25-6-43 TO 0700 HRS. 28-6-43	Bdr. McGaffin Documentary	7 DAYS C.B.	28-6-43	C.A.S. Smith Lt.-Col.	FORFEITS 4 DAYS PAY F.R. #1. 149-1
Field	27-4-44			1st CHARGE: SEC 11 AA W.O.A.S. NEGLECTING TO OBEY ORDERS IN THAT WHILE ON GUARD DUTY 27-4-44 DID GO INTO A PUBLIC HOUSE. 2nd CHARGE: SEC. 11 AA W.O.A.S. NEGLECTING TO OBEY ORDERS IN THAT HE WHILE ON GUARD DUTY WAS WITHOUT HIS RIFLE, BAYONET, STEEL HELMET, AND WEB EQUIPMENT. 3rd CHARGE: SEC. 40 AA W.O.A.S. CONDUCT TO THE PREJUDICE OF ETC. IN THAT HE WAS IMPROPERLY DRESSED, WHILE ON GUARD DUTY WAS WITHOUT HIS PROPER EQUIPMENT.	Cpl. Ross	28 DAYS DETN.	6-5-44	MAJOR R.C. Kelly	TOTAL AUTO FORFEIT OF PAY 37 DAYS.

"RELEASED FROM DETN. BARRACK H. DOWN ON 30 MAY 1944 SENTENCE HAVING EXPIRED. REMISSION EARNED UNDER RULES FOR DETN. BARRACKS AND MILITARY PRISONS 3 days."

(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	8-2-44	GNR.	2ND.	DRUNKENNESS IN THAT HE AT THE MOUND, EDINBURGH DID APPEAR IN A PUBLIC PLACE DRUNK SEC. 19 A.A.	DOCUMENTARY	ADMONISHED	19-2-44	LT-COL. G.A.F. TOWNSEND	
FIELD	8-2-44	GNR.	1	CONDUCT TO THE PREJ. ETC. IMPROPERLY DRESSED A.A. SEC. 40	DOCUMENTARY	5 DAYS F.P.	19-2-44	LT-COL. G.A.F. TOWNSEND	
FIELD	13-4-44	GNR.	3rd.	DRUNKENNESS IN THAT HE AT CHARING CROSS UNDERGROUND STATION LONDON DID APPEAR IN A PUBLIC PLACE DRUNK SEC. 19 A.A.	DOCUMENTARY	£5 FINE.	19-4-44	MAJOR R.C. KELLY	
FIELD	15-6-44	GNR.		1) AA SEC 41 - COMMITTING A CIVIL OFFENCE HOUSEBREAKING & LARCENY CONTRARY TO SEC 26 (1) OF THE LARCENY ACT 1916 (2) AA SEC 18(4) - STEALING PROPERTY BELONGING TO A REGTL. MESS (3) AA SEC 19 - DRUNKENNESS IN THAT HE ON 15-6-44 WAS DRUNK.		60 DAYS DETN. FINDINGS AND SENTENCE OF THE COURT WERE CONFIRMED BY THE BRIGADIER Comd. H.Q. "C" GR 6-7-44 RELEASED FROM THE DETN. BARRACK N. DOWN ON 11 AUG. 44 SENTENCE HAVING EXPIRED. REMISSION EARNED UNDER RULES FOR DETN. BARRACKS AND MILITARY PRISONS" 20 DAYS	1-7-44	F.G.C.M.	TOTAL FORFEIT OF PAY 78 DAYS PAY.

Ex. 'J'

PTE.

No. K-48606 Name OSSELLE D.A. Sqn, Battery, or Company Corps C I C. Date of enlistment 26-11-42 GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40/P&S/136 (5413)

Date of last entry in Company Conduct Sheet No. and date of last drunk 4-15-6-44 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
CONTINUED	FROM	SHEET	No. I.	(4th OFFENCE) CLOSE ARREST: 18 DAYS FINDINGS: NOT GUILTY OF 1ST. CHARGE. GUILTY OF 2nd. & 3rd. CHARGES		CERTIFIED CORRECT (S. WHITAKER) CAPT.		19-7-44	
FIELD	13-8-44	GNR.		WOAS AWL. FROM 2230 HRS 13-8-44 UNTIL 1800 HRS 14-8-44. ABSENT 19 HRS 30 MINS. A.A. SEC 15 (1)	BDR. RUEST E.A. DOCUMENTARY	7 DAYS C.B. 3 DAYS PAY	17-8-44	LT. COL. G.T. INCH.	FORFEITS 1 days PAY FR&I. 149 (1) FORFEITS 3 days PAY FRI 149 (2) TOTAL 4 DAYS PAY
FIELD	14-9-44	PTE.		A.A. 156 WOAS AWL FROM 0600 HRS 14-9-44 UNTIL 2100 HRS. 17-9-44 - 3 days 15 HRS.	CPL. McBRIDE H.R.	28 DAYS PAY FRI. 149 (2)	20-9-44	A/LT. COL. A.F. MACPHERSON	FORFEITS 4 DAYS PAY FR&I. 149 (1)

(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
				Certified True Copy A/J Gaoler Ast. Prisoner leaving Australia [illegible]					

Ex. "1"

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).
K 48606	Private	Dennis Alexander OSSELLE	(C.I.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, 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 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 A.A. Sec 15(1) 3 times.

For A.A. Sec 11 2 times.

For A.A. Sec 40 2 times.

For A.A. Sec 19 2 times.

Date of first entry in Field Conduct Sheet 25 June 43

Date of last entry in Field Conduct Sheet 14 September 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~~ ~~beginning on the~~ ~~day of~~

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 11 days in military custody, i.e., Nil days in open arrest, 11 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 23

6. The date of his attestation is 26 Nov 42

7. The service which the accused is allowed to reckon is 1 year, 11 months

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

8. The accused is in possession of † N 11

~~9. (If the accused is a warrant officer or N.C.O.). The accused has served con-~~ tinously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of Lance	
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. 13479/2857 30,000 5/44 51-432 T.Ltd. Forms/B 296(War)/2

Ex. 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.
P.G.C.M.	15 Jun44 In the Field	A.A. Sec 19(4) A.A. Sec 19 A.A. Sec 41	60 days Detn.	Remission of 20 days

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 24 day of Oct. 44 [illegible]

Officer having custody of Regimental Books

4W-61

Pte. Ostefichuk. P.W.

SCHEDULE.

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

Accused : H 100455 PTE OSTIFICHUK P.W.

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 AASEC 18(A)	GUILTY	GUILTY	
2nd AASEC 40	GUILTY	GUILTY	
3rd AASEC 40	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 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 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 UNDERGO DETENTION FOR A PERIOD OF SIX (6) MONTHS.

(Sgd) ..... Judge-Advocate, if any. 12 Feb 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, 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 :

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) E.K. Farmer Brig

Date 16 Feb 45. Commanding, 2 Can Corps / Confirming Officer. Reserve 2 Can Corps

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

Accused.	Date.	Signature of Offr.
H 100455 Pte Ostifichuk P.W.	17 Feb 45	[illegible] 12 CDN ARMD C REGT (120)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AD 100 LW-61
CEASE TO [illegible] AFAB
40 P 50 B 1 [illegible]

FIELD GENERAL COURT-MARTIAL

4/388

RECEIVED 23 MAR 1945 JAG BRANCH C.M.H.Q.

Convened by Order of BRIG G R D FARMER Comd 1 CAN ARMD BDE Constituted 10 FEB 45

ACCUSED.

(For 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
H 100455	PTE	PETER WILLIAM	OSTIFICHUK	[illegible]

PROCEEDINGS REVIEWED 23 Mar 45

[illegible] PROCEEDINGS OF TRIAL.

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

Held in the Fd in (country) [illegible] on (date(s)) 12 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 33/27

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 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 1030 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 (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.W.G. THOMPSON	M/M ED	ROA
Member	MAJ	M.L. TROY	ED	C.I.C
Member	CAPT	K.F. GAREN		CAC
~~Judge Advocate~~				
Prosecutor	LT	M.G. FARR	CAC	18 CDN ARMD C REGT.
Defending Offr	CAPT	J. ARCHIBALD IRVINE	CAC	18 CDN ARMD C 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 DI p 33.)

A8. The accused ..... before arraignment makes(s) (no) (~~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.(2) The President records the pleas in Part I of the Schedule.

(1. RP 39, 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 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 85-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 37(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 C2.(1)
(*1. RP 37(A) (1).*)

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 91 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 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(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 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 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, H.100455 Pte Peter William OSTIFICHUK, 2 Cdn C Car Coy RCASC att 18 Cdn Armd C Regt (12D), a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE
A.A.Sec.18(4)

WHEN ON ACTIVE SERVICE RECEIVING, KNOWING IT TO HAVE BEEN STOLEN, PUBLIC PROPERTY

in that he

in the Field on or about 24 Jan 45 did receive from D.131606 Tpr Pascal, N., 18 Cdn Armd C Regt (12D) 2 cans bully beef, 2 cans Spam, 4 tins jam, 1 can marmalade, 1 tin coffee, 1 can peas, 1 can mustard to the total value of One pound, three shillings and sevenpence (£1.3.7) property of the Canadian Government, knowing the same to have been stolen.

SECOND 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 or about 24 Jan 45, did trade Army rations to civilians for cognac

THIRD 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 or about 24 Jan 45 did improperly take and use W. D. vehicle No. C2-4228039 and petrol for private purposes.

In the Field
7 Feb 45

(P. C. R. Black) Lt-col
Comd 18 Cdn Armd C Regt (12D)

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
10 Feb 45

(C.E.L. Farmer) Brigadier
DJAG 2 Cdn Corps

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA1)
40/P&S/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 parcs 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.100455	Pte		Peter William	OSTIFICHUK	2 Cdn C Car Coy RCASC att 18 Cdn Armd C Regt (12D)

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 Feb 45 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial". Gnd 7

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.) Gnd 7
(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. Gnd 7
(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. Gnd 7
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-col	J.W.G. Thompson MM ED	RCA

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Major	M.L. Troy ED	CIC
Captain	K.F. Garen	CAC

WAITING MEMBER.

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

JUDGE-ADVOCATE.

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

On Active Service in the Fd

in Holland (Country.)

G R D Farmer (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

(G.R.D. Farmer)

Date 10 Feb 45 Commanding RCAMC 2 Cdn Corps
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Con) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(*C*)), any objections (*RP* 95(*D*)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply *so far as* practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 60(*C*), 87(*C*), 92(*C*) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(*C*).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(*C*), 92(*C*) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*See RP* 40 *fn* 7, *accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(*E*), *KR Can* 563(a).)

(vii) Summing up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 557.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can* 566. *As to certified copies of regimental books see AA* 163 (1) (*g*) (*i*).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(9), *RP* 118(*C*), *MML p* 739.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MED OFFRS CERTIFICATE
KR (Can) para 557

I certify that I have this day examined No. H 100455 Pte Peter William OSTIFICHUK of 2 Cdn Corps Car Coy RCASC att to 18 Cdn Armd C Regt and in my opinion he is fit to undergo trial by Field General Court Martial.

(E H Brotman) Capt RCAMC
RMO 18 Cdn Armd C Regt

Sta: in the Field

Date: 12 Feb 45

1

Proceedings

E 1 Capt J.L. Duncan Padre 18 Cdn Armd C Regt. sworn states.

The accused came to me a year and a half ago as my batman driver and has been with me steadily since. His work has been satisfactory and I have have never doubted his honesty and I have always trusted him with my equip and never have I lost an item. It was a great surprise to me when the charges were laid. The accused has been in no trouble since emp by me.

RP. 93 (B) complied with.

E.3. Plea in mitigation att.

12 Feb 45. [signature] PRESIDENT

E-3.

Plea in mitigation of sentence in the case of H-100455 Pte Ostifichuk, P.W.

Sir:

Before you pass sentence on Pte Ostifichuk, there are a few points I would like to bring to your attention.

1. The record of the accused. He has been in the army since 11 Apr 42. He came to England in March 43, and to 18 Cdn Armd C Regt in Jul 43. He has been attached to this unit continuously since, and never during that time has he been on a charge of any kind, in fact with the exception of two minor charges in Canada he has a clear record throughout his army career. He had worked diligently and has beensatisfactory in every way, as Capt Duncan, for whom he worked, has testified.

2. He now has three charges against him. Receiving Public Property knowing it to be stolen, trading army rations to civilians and improperly using a W.D. Vehicle and petrol for private purposes. These charges are all the result of one small mistake that Ostifichuk made and that mistake was that he had anything to do with Tpr Pascal. He was approached by Pascal, who had these rations and was then in a difficult position. He had an army vehicle at his disposal, a fact that Pascal knew quite well, and it would be a very easy matter for him to dispose of these rations. Unfortunately he allowed himself to be persuaded to take these rations, not realizing the seriousness of what he was doing. From then on everything was easy for him. There was no check on his vehicle, which is proven by the fact that it was not reported to have been taken out without permission, and everyone knows that army rations can be traded or sold anywhere in this country. When crimes can be accomplished with so little difficulty it certainly tends to make a man think they are not very serious.

3. Pte Ostifichuk of his own free will gave the information which led to his being charged. Capt Keith searched his kit on 24 Jan 45, at about 2200 hrs. He found two tins of rations and one bottle of Cognac. The only charge that he could then lay against this man was that he was illegally in possession of these articles. He could not prove that Ostifichuk had received rations knowing them to be stolen, that he had traded rations for Cognac, or that he had improperly used a W.D. Vehicle, because at that time he had no evidence to substantiate any of these charges. Nor is it likely that he would have been able to get it if Ostifichuk had refused to make a statement. However he chose to make a full confession admitting his guilt on all three charges which were then placed against him.

I ask, then, that you take into account these three things.

1. His good record.

2. The fact that all three charges are the result of one small mistake.

3. That Ostifichuk himself gave the information which led to the charges being placed against him.

If these points are considered, it is quite evident that, although this man admits he is guilty, he is entitled to as lenient a sentence as can be given.

J.A. Irvine Capt.

(J.A. Irvine) Capt.

EXHIBIT "A"

SUMMARY OF EVIDENCE in the case of H100455 Pte Ostifichuk, P W, 2 Cdn Corps Car Coy RCASC, attached to 18 Cdn Armd C Regt (XII MANITOBA DRAGOONS) Cdn Army Overseas charged with (1) Conduct to the Prejudice of Good Order and Military Discipline, in that he, at approx 0830 hrs 24 Jan 45 did receive stolen army rations, namely, 2 cans bully beef, 2 cans spam, 4 tins jam, 1 can marmalade, 1 tin coffee, 1 can peas, 1 can mustard, total value £1-3-7; also charged with (2) Conduct to the Prejudice of Good Order and Military Discipline , in that he, at approx 1100 hrs, 24 Jan 45, did dispose of army rations to civilians for cognac. Also charged with (3) Conduct to the Prejudice of Good Order and Military Discipline, in that, at approx 1100 hrs 24 Jan 45 did take and improperly use WD Veh #CZ 4228039 and petrol for private purposes.

The CO directs that the evidence be taken on oath.

FIRST WITNESS

L22647 L/Cpl Bowering, G R, 18 Cdn Armd C Regt (XII MANITOBA DRAGOONS) sworn, states:

I was on 25 Jan 45 and still am a L/Cpl Regt Provost of 18 Cdn Armd C Regt (12 D). At 0100 hrs 25 Jan 45 on returning to the guard room I found Pte Ostifichuk under close arrest. In the presence of Capt N B Keith, I witnessed the voluntary statement given by Pte Ostifichuk and at the time he was warned by Capt N B Keith that anything he said could be used against him in evidence.

The accused declines to cross-examine this witness.

(L22647 L/Cpl Bowering, G R)

G R Bowering L/Cpl

SECOND WITNESS

A116130 Tpr Panabaker, O C, 18 Cdn Armd C Regt (XII MANITOBA DRAGOONS) sworn, states:

I was on 24 Jan 45 and still am a trooper of the 18 Cdn Armd C Regt (12 D). On the night of 24 Jan 45 Pte Ostifichuk was in my barrack room playing dice. Between 2230 and 2300 hrs 24 Jan 45 Tpr Pascal came to my room and called Pte Ostifichuk out. About 15 minutes later I went into the hallway and saw about six cans of army rations piled on a desk. I saw Pte Ostifichuk and Tpr Pascal in the hall at the time.

Cross-examined by the accused.

Q Did you see me receive any goods from Tpr Pascal?

A No.

Q At the time you saw both of us, Tpr Pascal and I, in the hallway, were we intoxicated?

A I don't know.

O C Panabaker

(A116130 Tpr Panabaker, O C)

THIRD WITNESS

A70704 Tpr Powers, J F, 18 Cdn Armd C Regt (XII MANITOBA DARGOONS) sworn, states:

I was on 24 Jan 45 and still am a trooper of the 18 Cdn Armd C Regt (12 D). At approx 2200 hrs on 24 Jan 45 Capt N B Keith entered my room and asked me to be a witness to his searching Pte Ostifichuk's Kit. He search Pte Ostifichuk's kit and found two or three tins of army rations. He then put the rations back in Pte

THIRD WITNESS (Cont'd)

Ostifichuk's kit and warned me that I may be called upon to be a witness. I sleep in the same room as Pte Ostifichuk.

The accused declines to cross-examine the witness.

J. Powers

(K70704 Tpr Powers, J F)

FOURTH WITNESS

Capt N B Keith, 18 Cdn Armd C Regt (XII MANITOBA DRAGOONS) sworn, states:

I was on 24 Jan 45 and still am a Capt T/OC HQ Sqn 18 Cdn Armd C Regt (12 D). On the evening of 24 Jan 45 at approx 2130 hrs I was informed that our kit chen lorry had been entered and a quantity of rations stolen. I was informed that Pte Ostifichuk had been seen with army rations. I went to Pte Ostifichuk's quarters and in the presence of K70704 Tpr Powers, J F and H77257 Tpr Dixon, R A, searched Pte Ositifichuk's kit. There were two tins of army rations and one bottle of three star cognac. I left these rations in PteOstifichuk's kit and had him arrested at approx 0030 hrs 25 Jan 45, at which time he made a statement of confession. I later arranged for Elizabeth Konings, ST WILLEBROD, HOLLAND, to give a statement regarding a transaction of army rations for cognac.

The accused declines to cross-examine the witness.

N B Keith Capt

(Capt N B Keith)

The cognac referred to by the witness, produced marked Exhibit "A", signed by me and attached hereto.

E W March Lt

(Lt E W March)

The statement by Elizabeth Konings, referred to by the witness, produced, read over to the accused, marked Exhibit "B", signed by me and attached hereto.

E W March Lt

(Lt E W March)

The statement of confession, referred to by the witness, produced, read over to the accused, marked Exhibit "C", signed by me and attached hereto.

E W March Lt

(Lt E W March)

The accused warned 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 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.

Pte Ostifichuk

(H100455 Pte Ostifichuk, P W)

The accused declined to call witnesses in his own behalf.

I certify RP 4 has been complied with.

Taken by me in the Field, in the presence and hearing of the accused this 29 day of Jan 45.

(Lt E W March)
Officer taking Summary

STATEMENT OF ELIZABETH KONINGS 188A Karnemelk Straat, St Willebrord

Undersigned, Elizabeth Konings, lives at St Willebrord, Karnemelk Straat 188A, was present at, and recognized Tpr Ostifichuk as the soldier who exchanged eleven tins of food, property of the Canadian army, against three bottles of cognac. This exchange took place in my home, however the name of the person who received the exchange is unknown to me.

signed: Elizabeth Konings

Witness: Lt S E Dike (Netherland Liaison offr att 18 Cdn Armd C Regt)

Witness: H J A Verheggen
Vorpstraat 109 Willebrord

Certified True Copy of original as translated by Lt S E Dike.

(N F Keith) Capt & D/OC
Headquarters Squadron
XII MANITOBA DRAGOONS

A. Willebrord
26/7 '45

Onderteekende, Elisabeth Konings, wonende te St. Willebrod, Karstenmillstr. 133A, was aanwezig en herkende t/m. Ostafschuk, als de soldaat die elf bliefjes toebehoorende aan het Canadeesche leger inmiddels tegen drie flesschen Cognac. Deze ruil werd voltrokken in mijn huis doch de naam van den fine die de ruilig voltrok is mij onbekend.

Elisabeth Konings

Getuigen: [signature]
attached to the C.A.O.

Getuigen: H. J. A. VERHEGGEN.
Nortwhaat 109, Willebrord.
[signature]

This is exhibit B referred to in the summary of evidence in the case of H 100455 Tpr. Ostifichuk P.W., taken before me this 29 day of January 1945.

[illegible]

SUMMARY OF EVIDENCE in the case of H100455 Pte Ostifichuk, P W, 2 Cdn Corps Car Coy RCASC, attached to 18 Cdn Armd C Regt (XII MANITOBA DRAGOONS) Cdn Army Overseas charged with (1) Conduct to the Prejudice of Good Order and Military Discipline, in that he, at approx 0830 hrs 24 Jan 45 did receive stolen army rations, namely, 2 cans bully beef, 2 cans spam, 4 tins jam, 1 can marmalade, 1 tin coffee, 1 can peas, 1 can mustard, total value £1-3-7; also charged with (2) Conduct to the Prejudice of Good Order and Military Discipline , in that he, at approx 1100 hrs, 24 Jan 45, did dispose of army rations to civilians for cognac. Also charged with (3) Conduct to the Prejudice of Good Order and Military Discipline, in that, at approx 1100 hrs 24 Jan 45 did take and improperly use WD Veh #CZ 4228039 and petrol for private purposes.

The CO directs that the evidence be taken on oath.

FIRST WITNESS

L22647 L/Cpl Bowering, G R, 18 Cdn Armd C Regt (XII MANITOBA DRAGOONS) sworn, states:

I was on 25 Jan 45 and still am a L/Cpl Regt Provost of 18 Cdn Armd C Regt (12 D). At 0100 hrs 25 Jan 45 on returning to the guard room I found Pte Ostifichuk under close arrest. In the presence of Capt N B Keith, I witnessed the voluntary statement given by Pte Ostifichuk and at the time he was warned by Capt N B Keith that anything he said could be used against him in evidence.

The accused declines to cross-examine this witness.

(L22647 L/Cpl Bowering, G R)

SECOND WITNESS

A116130 Tpr Panabaker, O C, 18 Cdn Armd C Regt (XII MANITOBA DRAGOONS) sworn, states:

I was on 24 Jan 45 and still am a trooper of the 18 Cdn Armd C Regt (12 D). On the night of 24 Jan 45 Pte Ostifichuk was in my barrack room playing dice. Between 2230 and 2300 hrs 24 Jan 45 Tpr Pascal came to mybroom and called Pte Ostifichuk out. About 15 minutes later I went into the hallway and saw about six cans of army rations piled on a desk. I saw Pte Ostifichuk and Tpr Pascal in the hall at the time.

Cross-examined by the accused.

Q Did you see mereceive any goods from Tpr Pascal?

A No.

Q At the time you saw both of us, Tpr Pascal and I, in the hallway, were we intoxicated?

A I don't know.

(A116130 Tpr Panabaker, O C)

THIRD WITNESS

B70704 Tpr Powers, J F, 18 Cdn Armd C Regt (XII MANITOBA DARGOONS) sworn, states:

I was on 24 Jan 45 and still am a trooper of the 18 Cdn Armd C Regt (12 D). At approx 2200 hrs on 24 Jan 45 Capt N B Keith entered my room and asked me to be a witness to his searching Pte Ostifichuk's Kit. He search Pte Ostifichuk's kit and found two or three tins of army rations. He then put the rations back in Pte

THIRD WITNESS (Cont'd)

Ostifichuk's kit and warned me that I may be called upon to be a witness. I sleep in the same room as Pte Ostifichuk.

The accused declines to cross-examine the witness.

(K70704 Tpr Powers, J F)

FOURTH WITNESS

Capt N B Keith, 18 Cdn Armd C Regt (XII MANITOBA DRAGOONS) sworn, states:

I was on 24 Jan 45 and still am a Capt T/OC HQ Sqn 18 Cdn Armd C Regt (12 D). On the evening of 24 Jan 45 at approx 2130 hrs I was informed that our kit chen lorry had been entered and a quantity of rations stolen. I was informed that Pte Ostifichuk had been seen with army rations. I went to Pte Ostifichuk's quarters and in the presence of K70704 Tpr Powers, J F and H77257 Tpr Dixon, R A, searched Pte Ostifichuk's kit. There were two tins of army rations and one bottle of three star cognac. I left these rations in PteOstifichuk's kit and had him arrested at approx 0030 hrs 25 Jan 45, at which time he made a statement of confession. I later arranged for Elizabeth Konings, ST WILLEBROD, HOLLAND, to give a statement regarding a transaction of army rations for cognac.

The accused declines to cross-examine the witness.

(Capt N B Keith)

The cognac referred to by the witness, produced marked Exhibit "A", signed by me and attached hereto.

(Lt E W March)

The statement by Elizabeth Konings, referred to by the witness, produced, read over to the accused, marked Exhibit "B", signed by me and attached hereto.

(Lt E W March)

The statement of confession, referred to by the witness, produced, read over to the accused, marked Exhibit "C", signed by me and attached hereto.

(Lt E W March)

The accused warned 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 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.

(H100455 Pte Ostifichuk, P W)

The accused declined to call witnesses in his own behalf.

I certify RP 4 has been complied with.

Taken by me in the Field, in the presence and hearing of the accused this 29 day of Jan 45.

(Lt E W March)
Officer taking Summary

Statement H 100455 Spr Ostifichuk P.W.

I H100455 Spr Ostifichuk P.W. have been duly warned that any-thing I say will be taken down in writing and maybe held against me in evidence. I therefore give the following statement freely and without co-hersion

P.W. Ostifichuk

Witness.
G.R. Bowering L/Cpl

I H 100455 Spr Ostifichuk P.W. on the morning 24th Jan 1945 at approximately 0830 hrs went with D 131606 Spr Pascal N. to his room, where he offered to give me some Army Rations, I accepted the rations. He gave me the following:

2 Cans of Bully beef.
2 Cans of Spam.
4 Cans of Jam (one I used in my quarters).
1 Can of Marmalade.
1 Can of Peas
1 Tin of Coffee
1 square can. Perhaps Mustard.

I brought these back to my quarters in my tunic and greatcoat and left them on my bed until approximately 1045 hrs. I then took Capt. Duncan's N.U.P. of which I am the driver, and the rations and went to St. Willebrod where I traded all the rations, minus the one tin I had used, to a civilian for three bottles of cognac.

EXHIBIT "B"

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)
H.100455	Pte Peter William OSTIFICHUK,	2 Cdn Corps Car Co y, RCASC att to 18 Cdn Armd C Regt	

1. The following is a fair and true summary of the entries in the Field ~~Service Unit Conduct Regimental and Squadron Service~~ Conduct sheets ~~of 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
For	Sec 15(1) AA AWL times	1 times
For	Sec 40 AA Cond to prej times	1 times
For	times	times
For	times	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, possibly 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 17 days in civil custody, and 17 days in military custody, making a total of 17 days in custody, of which nil 0 days were spent in hospital.

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

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 5 Sep 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 ~~(or 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 the regimental rank of .....~~

Statement H 100455 Spr Ostifichuk P.W.

H100455 Spr Ostifichuk P.W.

I have been duly warned that any-thing I say will be taken down in writing and maybe held against me in evidence. I therefore give the following statement freely and without cohersion

Witness. P.W. Ostifichuk

G.R. Bowering L/Cpl

I H 100455 Spr Ostifichuk P.W. on the morning 24th Jan 1945 at approximately 0830 hrs went with D 131606 Spr Pascal N. to his room, where he offered to give me some Army Rations, I accepted the rations. He gave me the following:

2 Cans of Bullybeef.
2 Cans of Spam.
4 Cans of Jam (one I used in my quarters).
1 can of Marmalade.
1 can of Peas
1 Tin of Coffee
1 square can - Perhaps Mustard.

I brought these back to my quarters in my tunic and greatcoat and left them on my bed until approximately 1045 hrs. I then took Capt. Duncan's Nfl. P. of which I am the driver, and the rations and went to St. Willebrod where I traded all the rations, minus the one tin I had used, to a civilian for three bottles of cognac.

I then saw Spr Pascal at supper and told him I had received the cognac for the rations. We spent the evening together at a cafe in Oudenbosch and drank two of the bottles. The third one is in my bag.

P. W. Ostifichuk.

Witness.

G R Bowering Hopl

Statement taken by Capt. N. B. Keith.

0100 hrs 25 Jan 1945.

This is exhibit 'C' referred to in the summary of evidence in the case of H100455 Tpr Ostifichuk P.W., taken before me this 29 day of Jan 45.

[illegible] Lt

EXHIBIT "B"

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)
H.100455	Pte	Peter William OSTIFICHUK, 2 Cdn Corps Car Co y, RCASC att to 18 Cdn Armd C Regt	

1. The following is a fair and true summary of the entries in the Field ~~Regimental and Squadron Rating~~ Conduct sheets ~~of 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
For Sec 15(1) AA AWL	times	1 times
For Sec 40 AA Cond to prej	times	1 times
For	times	times
For	times	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, possibly 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 17 days in civil custody, and 17 days in military custody, making a total of 17 days in custody, of which nil 0 days were spent in hospital.

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

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

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 H100455 Rank Pte

Name Peter William OSTIFICHUK of 2 Cdn Corps Car Coy RCASC 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 7th day of Feb 45

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.

(C E HENRY) Lt & A/Adjt
16 Cdn Armd C Regt

EXHIBIT "C" MFM 6 (AFB 122) 40/PAS/136 (3438)

No M-100455 Name Ostifichuk, P W | Sqn, Battery or Company | Corps CAC | Date of enlistment 5 Sep 42 | OC 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 OC Company, etc N B Keith 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
				Certified True Copy of original:-					
				(C E Henry) Lt & A/Adjt 18 Can Armd C Regt					

(PTO)

S. C. M. 125

Lieut. Astiguy, J. P. St.

A-48/ Gene-125

A Army Form A 9.

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

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

Proceedings of a General Court-Martial held at 1 Cdn Base Ref Depot in the Field on the 21st day of August 1943 by order of Colonel G. Hedley Basher, OBE, ED

Commanding 1 Cdn Base Ref Depot

dated the 19th day of August 1943.

President.

Lt-Col R S Hallett, ED, RCA, 2 Bn, 1 CBRD

Members.

Major F W Nash, ED, CAC, 1 Bn, 1 CBRD

Capt R B Rutsell, RCA, 3 Bn, 1 CBRD

Capt I M Orge, CAC, HQ, 1 CBRD

Capt D Sutherland, CIC, 2 Bn, 1 CBRD

Major K G Morden, DJA, Cdn Sec GHQ 1 Echn, Judge Advocate.

Trial of* Lieut Jean Paul Wilson Gatigny, CAC, 3 Bn, 1 CBRD

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 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut H C Bent, 3 Bn, 1 CBRD

Counsel‡ or defending officer† Lieut [illegible] Carr, 3 Bn, 1 CBRD C.F

At 10.30 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.* 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.

Q1261 Wt.W4503/P67. 40,000 sets. 2/43. K. & H., Ltd. G667/51. Form A 9.5.

Skillet Dropped, Capt
by 3 Sept 43.

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

The following officers under instruction are duly sworn.

Major G A Hill-Wilson

Question by President to the accused: Do you object to B-92851 Cpl Phillips G L acting as shorthand writer? No, sir.
The shorthand writer is duly sworn.
The witnesses withdraw.

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, sir. *Answer.*

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

Not Guilty, sir. *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 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.*

B.2.
R S Hallett Lt. Col.
President

CHARGE SHEET

The accused, Lieut. Jean Paul Wilson OSTIGUY, C.A.C. on the strength of 3 Bn., 1 C.B.R.D., an officer of the Canadian Army Overseas, 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,

when officer i/c guard at 15 Cdn. General Hospital, on the 13th day of August, 1943, was in Phillipeville, Algeria, when his duty required him to be at 15 Cdn. General Hospital, ElArrouche, Algeria.

SECOND CHARGE
Army Act
Sec. 40

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

in that he,

when officer i/c guard at 15 Cdn. General Hospital, on the 14th day of August, 1943, was in Phillipeville, Algeria, when his duty required him to be at 15 Cdn. General Hospital, ElArrouche, Algeria.

Vincent McKenna ..Lt.-Col.
(Vincent McKenna,) M.C., E.D.,
Officer Commanding 3 Bn., 1 C.B.R.D.

In the Field
18 August 43.

To be tried by General Court Martial

20 Aug 43

G J Kelly Basher
.....Colonel
Commandant, 1 Cdn Base Reinforcement Depot

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.

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.

being duly sworn, is examined by the prosecutor.

Prior Witness (Lt Col Farmer)

Q.6 What was the nature of his attachment?

A.6 He proceeded on command..

Q.7 Did it appear on unit orders?

A.7 No.

Q.8 Do you consider this guard as an important duty, or a formality?

A.8 I consider it a most important duty in time of war.

Q.9 And why did you select Mr Ostiguy to take charge of your guard?

A.9 He was the most available officer.

Q.10 You found Lieut Ostiguy as being conscientious?

A.10 Quite conscientious, yes.

Q.11 Did you give any written orders to the guard?

A.11 No.

Q.12 What were the orders that he was to take take with the guard and impart to Col Farmer?

A.12 There was a guard on when Mr Ostiguy took over.

Q.13 In that case you did not give any orders?

A.13 Quite true, sir. It was the duty of 15 Cdn Gen Hosp to detail the guard duties. My instructions were to detail an officer and the personnel to comprise that guard.

Questioned by the Court:

Q.14 They were just sent out to be attached for all purposes?

A.14 For all purposes, that is correct, sir.

Q.15 Who was the guard commander on that occasion?

A.15 The original guard commander was a sergeant. The guard is usually commanded by an NCO. [illegible]

Q.16 Mr Ostiguy was not detailed as commander of the guard?

A.16 No. An NCO is always commander of the guard to my knowledge of the Army.

Questioned by Judge-Advocate:

Q.17 You detailed him?

A.17 I detailed him to be in charge of the guard, definitely. He was commander of the attachment whose duty it was to supply the guard and to administer to their needs.

In the opinion of the Court and the Judge Advocate, it is unnecessary to comply with RP 83(b).

The witness withdraws.

Second Witness for Prosecution: Major J S Neilson, RCAMC, 15 Cdn Gen Hosp, being duly sworn, is examined by the prosecutor:

Q.18 Will you identify yourself, please, and tell the Court what you know about this case?

Second Witness (Cont'd):

A.19 I am Major J B Neilson, Registrar, 15 Cdn Gen Hosp. At approximately 1000 hrs, 13th August, an occasion arose to see Lieut Ostiguy regarding a matter of military duty. I went down to the guard lines to locate him. I looked for him again at noon hour at the Mess and Dining Hall but did not see him there. The first time I saw him on August 13th was approximately 1630 hrs.

Q.19 Was Lieut Ostiguy attached to your unit for all purposes?

A.19 Yes.

Q.20 In your unit if any officer desired to go away for a short time, would it be necessary to apply for a pass?

A.20 Yes, it is necessary to apply for a pass.

Q.21 Approximately how far is it from El Arrouch to Philippeville?

A.21 Approximately twenty-five miles.

Q.22 Would you, sir, tell the Court what occurred on the 14th of August in relation to the accused?

A.22 At approximately 1630 hrs 14th August, the result of a disturbance in the guard room, I had need of Lieut Ostiguy. I was unable to locate him at this time having inquired for him again in the guard lines. I did not see him at that time until approximately 1930 hrs, at which time I spoke to him and acquainted him with the disturbance that had gone on in the guard lines. I also, at that time, acquainted the HQ here with the nature of the disturbance.

Q.23 Did the accused on the 13th or 14th ask your permission to be absent from the area?

A.23 He did not.

Cross-Examined by Defending Officer:

Q.24 Major Neilson, did the accused report to you on his arrival at 15 Cdn Gen Hosp?

A.24 Not to my recollection.

Q.25 When did you first see him?

A.25 On the day of his arrival in the camp. I spoke to him at that time.

Q.26 How long would that be?

A.26 That was at noon. I don't recall the exact date he arrived.

Q.27 Was he taken on strength in hospital orders?

A.27 No, sir.

Q.28 Are there Standing Orders for the guard?

A.28 Standing Orders that Mr Ostiguy gave to me. I asked him for them.

Q.29 In other words you asked Mr Ostiguy to provide his own orders to the guard which his detachment was furnishing to the Hospital?

A.29 Yes.

Q.30 On the 13th of August, sir, you were seeking for the accused. Would you tell the Court what you wanted him for?

Second Witness (Cont'd):

A.30 At the request of Col Farmer. He asked that I contact Lieut Ostiguy with the view to having him act as defending officer on a court-martial the following day.

Q.31 Did you regard the accused as the commander of the guard, or as the commander of the detachment whose duty it was to provide the guard?

A.31 I regarded him as the commander of the guard.

Q.32 Had you reason in searching for him to perform some other duties?

A.32 I was instructed to speak to him and have him act as defending officer. There was a reason. The lad concerned did not wish to have an officer in the unit defending him.

Q.33 Was the guard instructed by a member of the hospital staff?

A.33 I can not tell you that. I never inspected the guard myself.

Q.34 Did you find any fault with the instructions Lieut Ostiguy gave to the guard?

A.34 No, I did not.

Q.35 Did the accused ever ask you to deal with matters within the members of his guard or detachment?

A.35 Not to my recollection. May I ask one question, sir? Is it permissible? I don't quite know where the questioning is leading.

Q.36 I am attempting to establish that the accused was commander of a detachment instead of commander of the guard.

A.36 I don't quite understand.

Q.37 If he is commander of the guard he must remain. If not some NCO would be guard commander.
Did the accused refer a case of AWL of one of the members of his guard to you to be dealt with?

A.37 Not to my knowledge.

Q.38 Could you tell the Court, sir, how many pickets were posted?

A.38 No, I can not.

Q.39 Were any members of the guard allowed on pass?

A.39 Yes.

Q.40 Do you consider the guard as particularly important?

A.40 In view of the circumstances we considered the guard a necessity.

Re-Examined by the Prosecutor:

Q.41 Did this soldiers trial take place on the 14th of August?

A.41 Yes.

Q.42 And did the accused defend in this court-martial?

A.42 He did not.

Q.43 Was he later on the 13th asked whether he would defend

Re-Examined by the Prosecutor (Cont'd):

Q.43 (Cont'd) this soldier?

A.43 No, he was not asked. Another officer was detailed in his place.

Q.44 Would you say, sir, that the accused was aware that he was attached to 15 Cdn Gen Hosp for all purposes?

A.44 That was the understanding I got. The attached personnel were not shown in orders. They were merely took on the ration strength.

Q.45 It was merely a matter, then, to make things easier for 2 Echelon that this attachment did not appear in Part I Orders?

A.45 Yes.

Questioned by the Court:

Q.46 According to your way of looking at it, Major Neilson, the guard commander had complete jurisdiction over the guard. He made up his own orders and handled his own little show. I suppose you approved of the orders he had made up in the extent of the period and various sentries, where they were to patrol, and that sort of thing?.

A.46 That was left entirely to him, sir. On previous occasions I had gone down to straighten out one or two points concerning the guard. During his time there, there was no complaint. There had been on previous occasions.

Q.47 Was there anything in his orders submitted to you that would make you think that he could give his own guard leave?

A.47 No, sir, there was nothing in orders that would lead me to that conclusion.

Q.48 Did you inform Lieut Ostiguy, after not finding him on ~~either~~ the 13th ~~xxxxxx~~ of August, that in future he must get permission to leave camp?

A.48 No, sir. I saw him at 1630 hrs on that day at which time he was leaving the mess tent, and I was coming in. I did not see or speak to him that evening.

Cross-Examined by Defending Officer:

Q.49 Did you see the accused that day and inform him you had been looking for him to set in the court-martial, but it would not be necessary? Did you, or did you not, ask him to provide a guard?

A.49 That is correct. I went that evening of the following morning - between 1630 hrs, and the following morning prior to 1000 hrs, and asked if he would provide an escort for the court-martial.

In the opinion of the Court and the Judge-advocate, it is not considered necessary to comply with RP 83(2).

The witness withdraws.

Third Witness for Prosecution: E-4730 Sgt Harnois M, 3 Bn, 1 CSRD, being duly sworn is examined by the prosecutor:

Q.50 Will you identify yourself, sergeant?

A.50 I am E-4730 Sgt Harnois M, "A" Sub-Unit, 3 Bn, 1 CSRD.

Q.51 Were you on any special duty between the period of 8th

Kgm

Third Witness (Cont'd):

A.66 Yes, Sir, I believe he did.

Q.67 Did you consider yourself guard commander.

A.67 I considered myself second in command, sir.

Q.68 How many men were on guard at the time of Mr Ostiguys absence?

A.68 Two men, sir.

Q.69 How many men did you have on guard during the night?

A.69 We had five posts at night, and two in the afternoon.

Q.70 Five posts! Were they doubled?

A.70 Some were doubled during the night.

Q.71 You had seven or eight men?

A.71 We had ten at night, and two in the afternoon.

Q.72 Did Mr Ostiguy appear at the guard room during the time that the guard was doubled?

A.72 Yes, sir, he visited the guards every night.

Re-Examined by Prosecutor:

Q.73 At what time did Lieut Ostiguy go around to the guards in the evening?

A.73 Between eleven and twelve o'clock.

Questioned by Judge-Advocate:

Q.74 Where were you on the 14th of August?

A.74 I was relieved. I left quarters after eight o'clock that morning.

Questioned by the Court:

Q.75 This roving picket, or patrol I should say, is that inside or outside the fence?

A.75 Inside on that day, sir.

In the opinion of the Court and the Judge Advocate, it is not considered necessary to comply with RP 83(2).

The witness withdraws.

Fourth Witness for Prosecution: P-80181 Sgt Staddon R, 3 Bn, 1 CBRD, being duly sworn is examined by the prosecutor:

Q.76 Will you identify yourself, please, sergeant?

A.76 Sir, I am P-80181 Sgt Staddon R, "A" Coy, 3 Bn, 1 CBRD.

Q.77 When did you go down to 15th Cdn Sen Hosp?

A.77 At 1230 hrs on the 14th of August.

Q.78 Who had detailed you down there?

A.78 Capt Creamer, sir.

Q.79 Did he give you any instructions when you left here?

A.79 No, sir, I was to relieve Sgt Harnois.

Q.80 Who did you report to on your arrival?

Hgm.

Fourth Witness (Cont'd):

A.80 Mr Ostiguy.

Q.81 Did Mr Ostiguy give you any instructions as to your duties?

A.81 Yes, sir.

Q.82 Tell the Court.

A.82 He explained the number of men on guard, the number of men on shift, and my duties as well. I was to act as commander of the guard under Mr Ostiguy.

Q.83 Could you tell the Court anything of Mr Ostiguys' movements of the 14th of August, in the afternoon?

A.83 Yes, sir, he told me he was going out with some officers of 6 Armd Div, and that he would be back. He told me he was going to Philippeville to swim.

Q.84 What time did he leave?

A.84 At two o'clock, sir.

Q.85 And could you say when Lieut Ostiguy returned?

A.85 I saw him at eight o'clock, but had reason to believe he had returned earlier.

Q.86 You don't know the exact time?

A.86 No, sir.

Q.87 Did anything out of the way occur on that afternoon?

A.87 Yes, sir.

Q.88 Did you feel yourself quite capable of handling any disturbance that might arise?

A.88 Yes, sir.

Cross-Examined by Defending Officer:

Q.89 Were there standing orders for the guard?

A.89 Yes, sir.

Q.90 And who made them up?

A.90 I don't know. They were signed by Major Neilson.

Q.91 Was your guard ever instructed by any officer or member of the hospital staff?

A.91 No, sir.

Kgw Q.92 Did Mr Ostiguy inspect the guard?

A.92 Not while I was there, sir.

Kgw Q.93 Who inspected the guard on the 14th of August, in the morning?

A.93 I wasn't there, sir, in the morning.

Q.94 At the time Mr Ostiguy was absent how many men were on guard?

A.94 Two, sir.

Q.95 Were men allowed out on pass?

A.95 To my knowledge, yes, sir.

Q.96 You referred to shifts. What do you imply?

Kgw

Fourth witness (continued):

A.96 Tour of duty taken by the sentries, sir. There would be so many men on sentry and so many of the company on shift.

Q.97 Were the guards doubled up?

A.97 Not in the daytime, sir. Some of the guards were off altogether.

Questioned by the Court:

Q.98 Have you a copy of the order?

A.98 Not with me, sir.

Q.99 The copy you had, Sergeant, was signed by Major Neilson?

A.99 Yes, sir.

Questioned by Judge-Advocate:

Q.100 What did the written standing orders cover?

A.100 The duties of the guard. Guard commanders duties were included in it.

Q.101 And you say that was what you call the shifts?

A.101 Yes, sir, the shifts were made between ourselves.

Q.102 Anything about passes in these standing orders?

A.102 I did not notice them, sir.

Questioned by the Court:

Q.103 You were the guard commander?

A.103 Yes, sir.

In the opinion of the Court and the Judge-Advocate, it is not considered necessary to comply with AP 83(8).

The witness withdraws.

Defending Officer to Court:

Before proceeding with the case for the defence I would like the Court to consider that the prosecution has brought out evidence of neglect on the part of other persons but none on the part of the accused, much less any evidence of wilful neglect. Consequently, I would like to present a motion before the Court that the Charges be dismissed at this time.
There has been no evidence brought out to show that it was Mr Cattigny's duty to be at the hospital all the time, and that in view of the fact that he was administering his own detachment, which was of 14 days duration, he could reasonably be expected to take leave at times when his detachment had very little to do, namely, that of a two man roving picket, which was left in command of a sergeant.

Prosecutor to Court:

From the evidence of Major Neilson, who acts as Adjutant at 15 Cdn Gen Hosp, this guard party, or detachment, was attached to the hospital for all purposes, but due to the request of 2 Echelon, this was not put in hospital orders. In his evidence, Major Neilson stated that the presence of Mr Cattigny was required at all times, and it is apparent that Mr Cattigny went to Philippeville without permission of the authorities to whom he was responsible and left them no knowledge of his whereabouts during that time.

Defending Officer to Court:

I would like to submit to the Court that there is no evidence that his presence was required at the hospital, at all times. Nor is there any real evidence as to whom he was directly responsible.

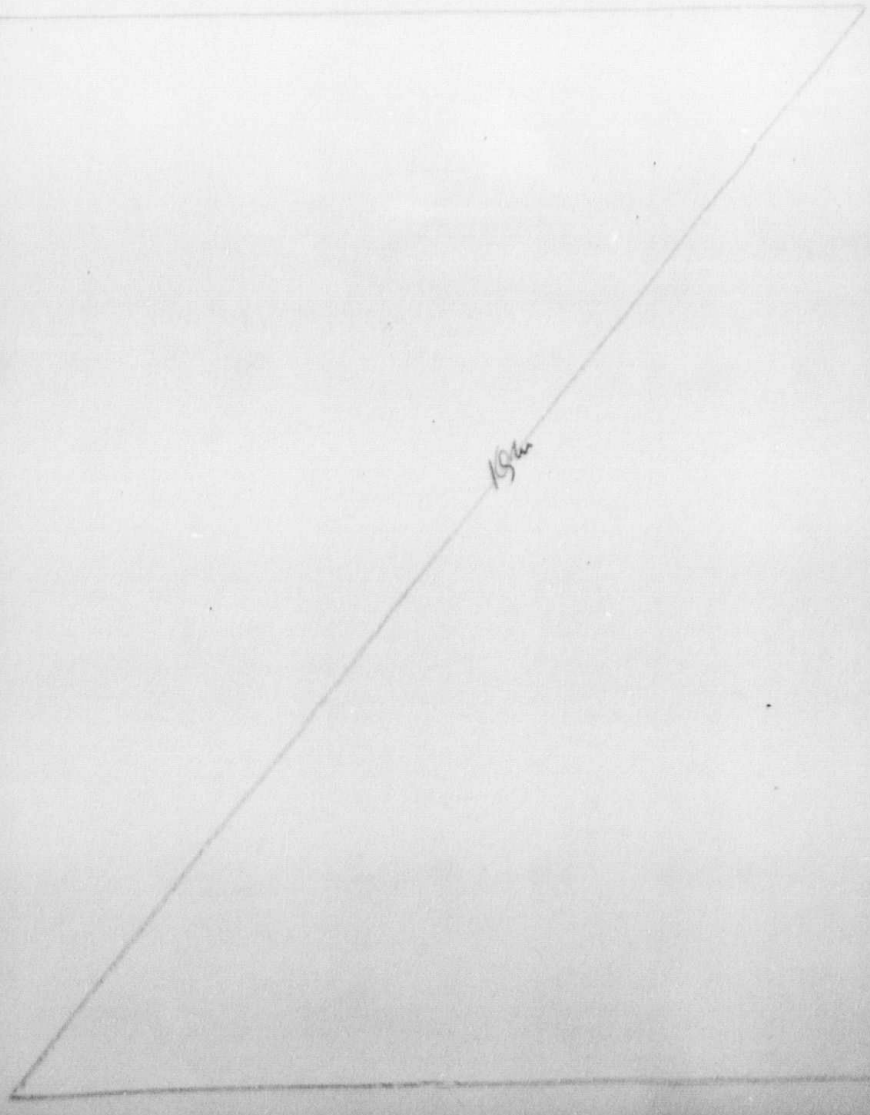
Court closed 1215 hrs to consider Defending Officer's motion.

Court re-opened at 1400 hrs.

The accused is brought before the Court.

President to Accused:

The Court accedes to your Defending Officer's motion. You are found not guilty of the First and Second offences, and you are now released from open arrest.



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 Lieutenant Jean Paul Wilson Ostiguy CAC, 3 Bn, 1 CBRD not guilty of the First and Second charges.

R S Hallett Lt Col.
President

21 Aug 43 K.G. Lunders Major
Judge Advocate

Proceedings on Conviction before Sentence.

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

Evidence of character, &c.

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

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.*

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.

Army Form A 47

COURTS-MARTIAL

Form of Order for the assembly of a General or District Court Martial.

ORDERS BY Colonel G. Hedley Basher, O.B.E, E.D.

Commanding the 1 Cdn Base Rft Depot

(Place and Date) Field - 19 August 43

The detail of officers as mentioned below will assemble at H.Q. 2 Bn, 1 CBRD at 1000 hrs the 21 day of August 43 for the purpose of trying by a General court-martial the accused person [~~named~~] named in the margin. In the opinion of the convening Officer, a general officer or colonel is not available to sit as President.*

LIEUT JEAN PAUL WILSON OSTIGUY CAC, 3 BN, 1 CBRD

PRESIDENT.

Lt-col R.S. Hallett, E.D, RCA, 2 Bn, 1 CBRD is appointed president.†

MEMBERS.

Major F.M. Nash, E.D, CAC, 1 Bn, 1 CBRD

Capt R.B. Hutsell, RCA, 3 Bn, 1 CBRD

Capt L.M. Orge, CAC, HQ, 1 CBRD

Capt D. Sutherland, CIC, 2 Bn, 1 CBRD

X R.S. Hallett Lt. Col. President.

Note.—The president must be named. The members and the waiting members may be mentioned by name, or the number and rank and the unit to which they belong may alone be stated.

WAITING MEMBERS.

Capt J.H. Chicoine, CIC, 1 Bn, 1 CBRD

JUDGE-ADVOCATE.

Major K.G. Morden, DJA, Cdn Sec GHQ 1 Ech

~~is hereby~~] appointed judge-advocate.

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to HQ, 1 CBRD

Signed this 20th day of August 1943

G. Hedley Basher.

(G. Hedley Basher) Colonel

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* *Any opinion of the convening officer with respect to the composition of the Court (see Army Act, s. 48 (10) and Rules of Procedure 20 and 21) should be added here; thus, where a Court-Martial is ordered to assemble, composed exclusively of officers of the same regiment of cavalry, or the same brigade of artillery, or the same battalion of infantry, the following should be added:—*

"In the opinion of the convening officer, other officers are not, having due regard to the public service, available," *(or as the case may be).*

† *Add here, in the case of either a General or District Court-Martial where a captain is appointed president and the officer convening the court is not under the rank of field officer,* "In the opinion of the convening officer a field officer is not, having due regard to the public service, available." *Where it is necessary for an officer under the rank of captain to be appointed president of a District Court-Martial, add,* "In the opinion of the convening officer a field officer or captain is not, having due regard to the public service, available." *(See Army Act, s. 48 (9).)*

‡ *The "unit," in the case of Royal Artillery, is a Brigade, where such organisation exists.*

(15479) W.L.35664/1691 10,000 11/39 A.& E.W.Ltd. Gp.698
(15339) W.L.41057/738 40,000 1/40 " " Forms/A47/42

List of Witnesses.

TRIAL OF Lieut Jean Paul Wilson Ostiguy, CAC, 3 Bn, 1 CBRD.

Capt G.W. Creamer, 3 Bn, 1 CBRD

Major J.B. Neilson, RCAMC, 15 Cdn Gen Hosp

E-4730 Sgt. Harnois, M, 3 Bn, 1 CBRD

F-80181 Sgt. Staddon, R, 3 Bn, 1 CBRD

I hereby certify that I have examined Lieut. J.P.W. Ostiguy, and in my opinion, he is fit to undergo trial by court martial.

W. S. Woolner .....Capt.
(W.S. Woolner,) Medical Officer,
3 Bn., 1 C.B.R.D.

In the Field
21 Aug 43

SUPPLEMENTARY ABSTRACT OF EVIDENCE in the case of Lieut. J.P.W. Ostiguy, on strength of No.3 Bn., 1 Cdn Base Rft Depot.

Captain G.W. Creamer, Officer Commanding "A" Coy, 3 Bn., 1CBRD will give evidence as follows:-

Lieut. Ostiguy was detailed by me to proceed to 15 th Canadian General Hospital to command the guard from 8 Aug 43 to 21 Aug 43. He left this unit at approximately 1400 hrs 8 Aug 43.

L.B. MacIsaac

(L.B. McIsaac)Lieut.

ABSTRACT OF EVIDENCE

In the case of Lieut J.F.W. Ostiguy, C.A.C., 3 Bn., 1 C.B.R.D.

FIRST WITNESS FOR THE PROSECUTION

Major J.B. Neilson, R.C.A.M.C., Registrar 15 Cdn Gen Hospital will give evidence as follows:

On 13 Aug 43 at approximately 1000 hrs, I went down to the guard lines, in search of Lieut Ostiguy, to request that he act as defending officer in a Court Martial. I did not find Lieut Ostiguy at the time. I looked for him again at the noon meal, but did not see him, and did not see him again, until about 1630 hrs, 13 Aug 43.

SECOND WITNESS FOR THE PROSECUTION

B4730 Sgt Harnois, M., C.A.C., "A" Coy., 3 Bn., 1 C.B.R.D. will give evidence as follows:

On 13 Aug 43, at approximately 1000 hrs, an officer came to the guard tent and enquired for Lieut Ostiguy. I informed him that I thought Lieut Ostiguy was in the Officers' Mess. About 1030 hrs Lieut Ostiguy informed me that he was going down to Phillippeville, for a swim and that he would be gone for two or three hours. I did not see him again until approximately 1830 hrs, 13 Aug 43.

THIRD WITNESS FOR THE PROSECUTION

Major J.B. Neilson, R.C.A.M.C., 15 Cdn Gen Hosp., will give evidence as follows:

On 14 Aug 43, at approximately 1630 hrs, as a result of information received from Sgt of the Guard, I required the services of LieutnOstiguy, but was unable to find him. I saw Lieut Ostiguy at approximately 1930 hrs, at which time I spoke to him and he informed me that he had been about in Phillippeville during the afternoon.

FOURTh WITNESS FOR THE PROSECUTION

F86181 Sgt Staddon, R., "A" Coy., 3 Bn., 1 C.B.R.D. will give evidence as follows:

On 14 Aug 43, Mr Ostiguy told me that he was going on a swim parade, with officers of the 6th Armoured Division. He informed me of the time of departure, where he was going and time of his return. He left the guard office at approximately 1430 hrs and returned at about 1450 hrs. He left again, immediately and returned about 1945 hrs.

L B MacIsaac

.....

(L.B. MacIsaac) Lieut
Officer detailed to take
Abstract of Evidence

the Field
ug 43

JJJ-141

TPR OSTIGUY ML

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) ..... (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 days, of which N/A 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 Thirty days pay.

(Sgd) ..... 18 MAR 44 (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 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 :

I confirm the finding and sentence of the court

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

Date 20 Mar 44 (Sgd) .....
Commanding 6 Cdn Inf Bde
Confirming Officer.

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

Accused. Date. Signature of Offr.

D 61082 Tpr. OSTIGUY R.L. 22 Mar 44 CAPT. & ADJT. 6 CDN. RECCE Bn. (14 CH)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

RECORDED AT CMHQ IN AB 160 4 JJT 141

FIELD GENERAL COURT-MARTIAL

CPA98 (1st Rev of AFA3) 40-P-R-1668 (2864)

Convened by Order of BRIG H A YOUNG Comd 6 Can Inf Bde dated 17 MAR 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.
D-61082	TPR	MARCEL LOUIS	OSTIGUY	8 Can Recce Regt.

PROCEEDINGS REVIEWED 10 May 44

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

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) U.K. on (date(s)) 17 MAR 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 6/45

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.(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 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0900 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 recites. 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.P.C. GAUTHIER	FUS MR
Member	CAPT.	J.E.E. MCMANUS	CAMS OF C
Member	CAPT.	F. MOUSSEAU	FUS M R
Judge-Advocate	—	—	—
Prosecutor	CAPT.	C.D. WILLIAMS	8 Can RECCE REGT
Defending Offr	LT.	J.T. COWAN	8 Can 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) plea. NIL (1)
(1. If a special plea is made for separate trial on one or more charges (RP 61(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 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 (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. Where more than one Charge Sheet see RP 62 ; where 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.

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 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 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, 119. 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 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 the JA, if any.(2)
(1. When several accused tried separately see RP [illegible]. 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.

The Accused Elects trial by F.G.C.M.

CHARGE SHEET

D-61088 Trooper Marcel Louis GUITTOUY, a soldier of the Canadian Army,(A.F.) is charged with:

FIRST CHARGE
A.A. Sec 3(2)

DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

in that he
On 1 Mar 1944, in the field at approx 1430 hours during an address by the GOC in C smoked a cigarette after having been ordered not to do so by Major J.F. Warner, 6 Cdn Recce Regt (14CH).

Signed In the Field
This 13th day of Mar 44.

W.M. Alway Lt.-Col.

(B.M. Alway) Lt.-col.
Comd 6 Cdn Recce Regt (14CH).

To be tried by Field General Court Martial

In the Field
14 Mar 44.

(H.A.Yeung)Brigadier
Commander 6 Cdn Inf Bde

J P-6 Gauthier Maj. - Pres.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAM/1697 (2965)

(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 an 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.
D61082	TPR		MARCEL LOUIS	OSTIGUY	8 CDN RECCE REGT. (14 CH)

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) 14 MAR 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.)~~ Hdq

(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.~~ Hdq

(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.~~ Hdq

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

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJ	J.P.C. GAUTHIER	FUS M R

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
CAPT	K. McMANUS	CAMERONS OF C.
CAPT	F. MOUSSEAU	FUS M R.

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
CAPT	H. P. WILLIAMS	S. SASK R.

JUDGE-ADVOCATE.

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

On Active Service in the Fd

in U.K. (Country.) — (Signed personally. RP 105 fn 2.) — Brig (Rank.)

Date 14 MAR 44 — Commanding 6 CDN INF BDE — Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

J.P.C. Gauthier Maj & Pres

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. (AA 52, KR Can 562, RP 26, 29, 111.)
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless there-unto required in due course of law.

2. JUDGE-ADVOCATE. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. (AA 52, MML 763, RP 82, 111.)
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. (RO (Can) 2693.)
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*); any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.
A 12345 Cpl H. Jones, RWR, sworn, states:
I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.
Cross-exam: He did not say he was sick. (or, None.)
Re-exam: None.
Exam by Court: He said—" I've had enough parades ".
RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 110 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)
(ii) At option of accsd, statement by accused *not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 10*); or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)
(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)
(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 565(a).*)
(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, *if any*. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:
(i) Charge Sheet. (*On top.*)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (*KR Can 557.*)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)
(v) Exhibits numbered Ex A, Ex B, etc. (*AA 163 (1) (g) (h).*)
(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 98(D).*) A recommendation for mercy will be inserted in Part 1 of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

COURT MARTIAL MEDICAL CERTIFICATE (KRCAN 557)

I certify that I have on this date examined.....

.....D 61082 Hr Ostiguy M.....

and he is fit/~~unfit~~ to undergo trial by Court Martial.

Date. 17 March 1944

.....[signature].....Capt.
RCAMC

J.P.C. Gauthier Maj. & Pres

Certificate as to adjournment under RP 44(c)

The Court adjourned to consult confirming authority on the following matter and for this reason:

Sec 9(2) of the Army Act refers to "Disobeying a lawful command given by a superior officer." The Court thought that this charge presupposes that the order is clearly understood by the one receiving it whether the order is given to a group of men or one single individual. On this assumption, which the Court thought the most important requisite of this charge, it was found doubtful whether the whole of a parade of 169 men could have clearly understood all the instructions given. Therefore, the Court wanted to make sure if the sec of the Army Act under which the charge was laid, required that "the order be clearly understood by each individual and this fact ascertained" or required that "the order should have been understood, without the superior officer ascertaining this fact."

For this matter and reason, the Court adjourned.

The confirming authority was of opinion that the accused should have understood the instructions.

J. P. C. Gauthier Maj & Pres.

First Prosecution Witness

Major J. F. Merner, having been duly sworn, states:

"I am in comd of H.Q. Sqn of 8 Can Recce Regt. The accused, Tpr. Astigny, whom I recognize, is in my Sqn. On 1 MAR 44, at 0830 hrs I had a parade when I gave the following instructions to the entire Sqn. I detailed the movements of the parade, and told the men that when ordered to surround the jeep, they would double to it and that they would not smoke, eat, or talk amongst themselves. On this parade the men were drawn up four deep, Capt. Bate on the left flank, the S.S.M on the right flank. The instructions given were not countermanded while I was on parade nor by the C.O. During the inspection, Capt Bate took my place and did not parade with the Sqn till the end of the inspection, having acted as Regt 2/c.

Cross exam:

Df: When the men were drawn in faces how were they?
Wit: In line facing me.
Df: Were they at attention or at ease
Wit: At ease.
Df: What was the parade state
Wit: 169
Df: How long did it take to give your orders.
Wit: 3 or 4 mins
Df: Did the order of "not smoking" come in there.
Wit: Yes, as told in my evidence.
Df: Were those the last words?
Wit: I cannot remember.

Capt. J. K. Bate having been duly sworn, states:

"I am ATK Tp Ldr of H.Q. Sqn, 8 Can Recce Regt. At 0830 hrs 1 MAR 44, the whole Sqn had a parade when instructions were given by Major Merner regarding the inspection by [illegible]

Part of the orders were that when ordered to break ranks and gather around the jeep the men will not, repeat not, smoke or talk. When we were seated around the jeep, I happened to notice the G.O.C. & Cantin and the Brig becoming agitated about something behind me. I turned around, and saw Tpr Astigny with a lighted cigarette in his mouth. I recognize the accused as Tpr Astigny. When we left the parade ground I ordered the S.S.M. to charge Tpr Astigny. At the time the orders were given, I was standing on the left of Rank. The inspection was held at about 1430 hrs 1 MAR 44. Senior NCOs and other offrs received the orders before the instructions were given to the men.

Cross-exam:

Dy: How long did it take to give the orders?
Wit: about 10 mins.
Dy: How far from Astigny were you standing while Gen Montgomery was speaking.
Wit: about 10 or 15 feet
Dy: Was the accused the only one smoking?
Wit: The only one I saw.
Dy: Did you see any others in the vicinity?
Wit: yes
Questions by the Court:
Q: On the morning parade, did you hear from where you were all that was said by Major Merner
A: yes.

L+53271 Tpr. Hancock W. G. having been duly sworn, states:

On 1 Mar 44, I was a corporal in No 16 Tp. I smoked on the inspection by the G.O.C. in C and reverted to Tpr on my own request three days ago. I was on the parade when instructions were given by Major Merner, and heard all the instructions regarding smoking from where I was.

No cross-exam.

B-37052 SSM Vincent G.S., sworn, states:

"I am H.Q. Sqn SM - Tpr Astigny is in my Sqn. As far as I know he was on parade on 1 MAR 44 at 0830, as he was not reported A.W.L. There were 169 men on parade - I only saw the accused after the inspection - Major Merner, at 0830 hrs, had given us the orders where he said there would be no smoking.

Cross-exam: Lt

Def: How long did Major Merner take to give his order?

Wit: about 15 mins

Def: When did you first see the accused?

Wit: only when I warned him he was under open arrest after parade.

B-37071 Sgt. Tocher, A.M. sworn: states

"I am the N.C.O. of No 18 Tp. Tpr Astigny, whom I recognise, was on parade at 0830 because I remember noticing he needed a haircut. I do he was standing at about 5 or 6 men from the end of the rear line. The parade was formed in four deep, 43 men per rank. The orders about smoking were given emphatically by Major Merner on this parade

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Cross-exam:

Def: Did Astigny ask you to leave the parade

Wit: No.

Def: Has the accused been warned by you about smoking

Wit: No

Question by the Court.

Q: Where were you standing at the time the orders were given?

A: Ahead of my tp which was on the left flank of the Sqn formed of 4 tps, four deep.

Q: Where was Pte Astigny

A: He was in the fourth rank, near the extreme of the left flank

Q: How far from the 1st rank was Maj. Murray.

A: 8 or 10 ft.

4-13262 Cpl Ruiter T.A., having been duly sworn, states:

On 1 Mar 44, I was around the jeep from where the Gen was speaking. I was told by an officer to stop from smoking 4 or 5 men in front of me. I passed the word around. There was also an N.C.O who belonged to the Regt, who was smoking.

Question by the Court:

Q: Were you on parade at 0830 hrs 1 March and did you hear the orders relative to smoking?

A: yes, by major merner.

Defence:

4-[illegible] Tpr. Besser C.C. No. 18 Tp., having been duly sworn, states:

"I was on parade at 0830 hrs 1 Mar 44. I did not hear any instructions regarding smoking on parade. In the afternoon I was standing near Cpl. Ruiter and there were men smoking and three NCO's of whom a sgt from C Sqn. An officer asked them to put out their cigarettes.

Cross-exam:

Pros: What were the orders you heard on the morning parade?

Wit: "Double over to jeep, no talking". I did not hear anything about smoking.

Pros: Were you smoking?

Wit: No sir. because an officer told me and it was the first time I had heard of this order.

D-61082 Tpr. M. Ostiguy, sworn, states:

"I was on the parade in the morning when orders were given. I was the 7th man from the end of the left of lank in the rear rank. I heard Maj. merner say "Keep your mouth shut when you gather around the jeep" and then "I guarantee you 14 days C.B." That I did not know why. That is all I heard, besides the proceedings. During Gen. Montgomery's speech I was smoking because others around me were smoking including some NCO's. So I did not see any harm in smoking myself. I heard some

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ordering to put the cigarettes out. So I did. The S.S.M told me I was under open arrest when we marched out of the field. Back to camp I learned that Capt. Bate had put me on charge. Went to see Capt. Bate to ask him to take my leave as I was supposed to. He agreed with the S.S.M's approval and told me I would not get any thing out of that charge, but not to do that again. I went on leave, and when I came back, I was charged.

~~Cross-exam.~~

~~Pros~~

Exam.

Def: Why did you light a cigarette.

Wit: Every body was smoking even NCO's.

Cross-exam

Pros. Can you identify NCO who was smoking?

Wit: No, he was from B Sqn.

Closing address by the defending offr is att'd as Appd'x to this Court. Marked "A".

Closing address by Prosecutor:

It has been proven by the witnesses, and the accused, that at the time orders were given the accused was on parade. That it was possible for him to hear the orders, and that he ought to have heard them. Every precaution had been taken to ensure that every body would get the orders, and they were brought on parade. It has also been proven that he has disobeyed a lawful command given personally by a superior officer.

The Court Closes to consider its findings

Under R.P. 44 (C) the Court adjourns to get the opinion of higher confirming authority on findings to be brought:

The Court is re-opened at 0940 13 MAR 44 after recording a finding subsequent to receiving opinion of confirming authority.

Witness as to character:

Lt. Robertson A.R. having been duly sworn states:

I am technical adjt. priority 1/c 18 Tp. I have had Tpr Astigny since Sep 42. During that period he has always carried out any orders implicitly. His duties in the unit require a certain amount of responsibilities and has never shown himself in carrying out any duty detailed.

Dff: When you tell Tpr Astigny to do something what does he answer

Wit: He repeats it.

Dff: What is Tpr Astigny's job

Wit: Driver

Dff: Does that leave him on his own

Wit: Yes, a certain amount of time.

Lt: J.T. Cowan, sworn, states:

I was A/Tpt off for some 6 weeks, Tpr Astigny being under me. I have always found Tpr. Astigny, very willing and conscientious in obeying all orders. His position in the regt has been one of thrust in that he hooked after was often detailed to do the jobs on his own outside unit lines. Never did the question of neglect or disobedience come up concerning the accused.

Plea in mitigation

The accused fully admits being on the parade on the morning 1 MAR 44 and also admits to smoking a cigarette while the tps were gathered around the Cin C's Jeep in the afn. I find it very easy to believe that if a no smoking order was given on the morning parade, that the accused did not hear, did not understand the order. [illegible] fifteen minutes, [illegible]

The whole day while the men stood rigidly at attention. The circumstances along with the good character of the accused as brought out by the witnesses, along with the fact that said permission was given to smoke on the parade as N.C.O's from his own Regt were smoking around him, I think that the accused should be very leniently dealt with.

Closing Address

To begin with let me remind the court that the accused is not entering a plea of not guilty because he forgetful but because he did not hear the order the no smoking. A plea of forgetfulness would be very simple to make for my part because of what happened later on parade.

I ask the court to remember the words of the character witness the accused has been in the army for four has never refused to obey an order. The only marks on his record were three entries about a year ago - all of which were later struck off.

The accused says that he was on the parade at 0930 hrs on the morning 1 March when the no smoking order is reported to have been given. The accused a French Canadian who has made a habit of forgetting orders back after they have been given to him, was standing in the back rank near the left end. I find it very easy to believe that if the no smoking order was given it could very easily have not been heard or understood by the accused My experience with given orders even to a

relatively small number of men on parade has often been that they did not penetrate and with some I have had to repeat two or three times — even when talking to some men personally. Major Merner had many things to say, outlining the events of the whole day while the men stood rigidly at ease. (1)

Then on the C in C's parade the troops were inspected which standing easy and a considerable amount of talking was going on in the ranks. After the inspection the troops were told to break ranks and gather around the jeep. They were told they would be more comfortable if they sat down. Everything was very informal; the C in C wanted to have a chat with his men. ~~On~~ A week previously an inspection was held by the Corps Commander — and smoking was allowed on parade up to ½ hr before the inspection. In this informal gathering on 1 Mar 44 the accused saw among others N.C.O.'s from his own unit smoking around him and consequently figured that smoking was permissible — so he lit a cigarette. The acting ~~2/c~~ 2/c of his squadron was standing

was standing close in front of him - and if the accused had thought that he was breaking an order would he have been so flagrant as to have done so in that position. He put his cigarette out only when the word was passed around that there was no smoking

On the parade re-formed ranks he was told by his S.S.M. that he was under open arrest for smoking. On arrival back at unit billets, he went to see Capt Bate, upon supper, at his earliest opportunity and said that he had been smoking on the parade, and that he did not know that there had been an order about not smoking. Capt Bate replied that the accused had been in the army long enough to know better than to smoke on parade and not to do it again. The accused then said he had a privilege leave due that night and asked if he might. He was told he could go if it was alright with the S.S.M. The S.S.M. then gave permission and the accused went on seven days leave, thinking that everything was now alright and the matter finished.

On arrival back from leave he was told by the Orderly Sgt that he was in charge for

anything on Gen. Montgomery Parade. The accused had thought that the matter was finished, and then before he was brought up before the C.O. ~~that~~ he found out that others brought up on a similar charge had been awarded twenty eight days pay and 14 days C.B.; meaning very little pay for three months. The accused then decided that as he had not disobeyed an order to his knowledge ~~and~~ that if he would elect for Courts Martial

Because of the character of the accused, the events described by the witnesses, the fact that he is a French Canadian — because tacit permission to smoke was given by seeing N.C.O.'s of his own regiment smoke. I ask that this case be dismissed

J. L. Cowan Lt

I talked for some 10 or 15 minutes — the men had not been previously warned — the evidence for prosecution an officer or senior N.C.O. who knew the orders beforehand — I have called to men in H.Q. Sqn who say they did not hear the order

SUMMARY OF EVIDENCE in the case of D-61082
Tpr. OSTIGUY, Marcel Louis , 8 Cdn Recce Regt (14CH)
a soldier of 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: Major J.F. Merner, 8 Cdn Recce Regt (14CH) states:

As a result of directions received from the Commanding Officer regarding the Inspection of this unit by General Montgomery I issued orders to my sqn (HQ) of which Tpr. Ostiguy whom I here recognise is a member, that there would be no smoking. At a parade held in my sqn lines at 0830 hrs 1 March 1944 I said" There will be no smoking on the parade including the time the troops have broken ranks and gathered around the Jeep" or words to that effect. I myself saw Tpr. Ostiguy on that parade. At no time subsequent to that did I countermand the order. As far as I was concerned the Commanding Officer alone was empowered to do that. I checked with my SSM and with Capt. Bates who were standing on the flanks of the parade and they heard my words. I did not see Tpr Ostiguy smoking on the parade, it was reported to me by Capt. Bate.

The accused declines to cross-examine.

John J. Merner
(J.F. Merner) Major.
8 Cdn Recce Regt (14CH)

SECOND WITNESS FOR THE PROSECUTION: Capt J.K. Bate, 8 Cdn Recce Regt (14CH) states:

Sqn. Leader Major Merner held a parade at 0830 hrs 1 Mar 1944. Inspection was carried out by certain officers. I was detailed as A/2 i/c and standing off to the left flank of the parade and was as far as any of the troops on parade were from the O.C. At the completion of the inspection Major Merner repeated the orders affecting the big parade which included one to the effect that " When the order break ranks and gather around is given you will NOT repeat ~~talk/~~ smoke. You will double to posn around the jeep. This order was never countermanded as far as I know by any officer.

Q: Was Ostiguy on parade?
A: Ostiguy whom I here recognise was not reported absent from the parade so I assume he was present.
Q: Did you at any time on the big parade see Tpr. Ostiguy smoking?
A: Yes I saw an agitated look on the G.O.Cs (Foulkes) face and a brigadier near him and as they were detailing a staff officer to check something behind me I turned around and saw Tpa. Ostiguy with a lighted cigarette in his mouth. I know him personally- I saw several others but not clearly enough to charge them.

The witness declines to cross-examine.

J.K. Bate
(J.K. Bate) Capt.
8 Cdn Recce Regt (14CH)

THIRD WITNESS FOR THE PROSECUTION: B-37052 S.S.M. Vincent G.F. 8 Cdn Recce Regt (14CH) states:

Tpr Ostiguy whom I here recognise was on parade 1 Mar at 0830 hrs. He was on parade I know at 0830 hrs because he was not marked absent and I subsequently saw him with the sqn at Worthing on parade. Major Merner told to the sqn the whole procedure of the parade and mentioned particularly that there would be no smoking during the time the troops had broken ranks and gathered around the General. The order against smoking was never countermanded as far as I know.

The accused declines to cross-examine.

G Vincent
(B-37052 SSM Vincent G.F.)
8 Cdn Recce Regt (14CH)

FOURTH WITNESS FOR THE PROSECUTION: Lt.-col B.M. Alway 8 Cdn Recce Regt (14CH) states:

I did not countermand my order forbidding smoking at the G.O.C'in Cs Inspection.

(B.M. Alway) Lt.-col
8 Cdn Recce Regt (14CH)

FIFTH WITNESS FOR THE PROSECUTION: B-37071 Sgt Tocher A.M. 8 Cdn Recce Regt (14CH) states:

On Mar 1 parade at 0830 hrs Tpr. Ostiguy who is in Admin Tp. of which I am i/c was present . I recall him especially because we had a Tp. inspection immediately prior and I noted that Ostiguy needed a hair cut. Ostiguy was in the rear rank. He was there when Major Merner cautioned the sqn against smoking.

The accused declines to cross-examine.

a M Tocher
(B-37071 Sgt Tocher A.M.)
8 Cdn Recce Regt (14CH)

(C.D. Williams) Capt.
Officer detailed to take the summary.

The accused having been duly warned in accordance with R.P.4(E) says.

"In that case I won't make a statement now."

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

Certified Rule of Procedure 4 complied with.

(C.D. Williams) Capt.
Officer detailed to take the summary.

In the Field
10 Mar 44.

The accused when asked if he wished to have an Officer represent him at the trial stated. " I desire the services of Lieut. A.K. Paton if he is available".

Second Sheet destroyed 7 April 42 on completion of Two years free from entry 2

M.F.M. 6 (A.F. B.122) 40/P & /S136 (2965)

No. 161082 Name OSTIGUY, M Sqn., Battery, or Company Corps 3 Cdn Recce Regt (14th) Date of enlistment 7-4-40 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet Nil No. and date of last drunk Nil 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
In the field	14 Mar 43	Tpr		W.O.A.S. A.W.L. from 2230 hrs 14 Mar 43 to 2330 hrs 14 Mar 43 (Absent 1 hr) Sec 18(1) A.A.	Sgt Miller	7 days C.B.	15 Mar 43	Major J.F. Miner	
In the field	18 Mar 43	Tpr		W.O.A.S. A.W.L. from 2230 hrs 18 Mar 43 1900 hrs 30 Mar 43 (Absent 11 days 20 hrs 30 mins)	Sgt Hayden	28 days ~~detention~~ detention placed under stoppages 52-47 & cost of approb	2 Apr 43	Lt Col. F.A. Nokes	Prof 40 days pay and stoppages of 52-47
In the field	11 May 43	Tpr		W.O.A.S. Breaking out of Barracks A.A. Sec. 10 (4)	R.S.M. Whitingstall Sgt Curtis	7 days C.B. 7 days pay	13 May 43	Lt Col. F.A. Nokes	

Certified true Copy 14 Mar 44 [illegible] Capt

J.P.C. Gauthier Maj & Pres.

(P.T.O.)

Y

(substitute for [illegible]
(2[illegible] or [illegible])

STATEMENTS OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED

No D-6108 RANK [illegible] M UNIT 8 Cdn Recce Regt (14CH)

AGE 22 MARRIED or SINGLE s No OF DEPENDENTS 1

DATE OF ATTESTATION 9 Sep 39

NO OF DAYS SPENT IN CLOSE ARREST (TO DATE OF TRIAL)

CIVIL _____ MILITARY 1 HOSPITAL _____ TOTAL 1

DATES OF PROMOTION [illegible] AND CONFIRMATIONS OF RANK IF ANY

A CERTIFIED TRUE COPY OF [illegible] ACCEPTED BY THIS FORM

(Officer i/c Records)

[illegible] Capt
[illegible] Recce Reg (14CH)

Dated ~~at~~ in the field
This 17 day of Mar 1944
(to be dated and signed as of date of trial)

J P C Gauthier Maj + Pres.

PART IV PROMULGATED AND EXTRACTS TAKEN

The a/m directions have been promulgated to the accused - D61082 Tpr. Ostiguy, M.L. on the 1 May 1944, and has been shown in Unit xxxxxxxxx C.R. #360 d/1 May 44.

The records of the accused have been amended accordingly.

(B.M. Alway) Lt.-col
Comd 8 Cdn Recce Regt (14CH)

In the Field,
This 2 day of ~~April~~ May, 1944.

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

"The Judge Advocate General, Canadian Army Overseas, having advised that the conviction on the charge in these proceedings involves substantial injustice to the accused, I hereby direct that the record of such conviction be and the same is hereby removed and the accused relieved from all consequences of his trial thereon.

In the Field,
This 31 day of April, 1944.

(H.A. Young) Brigadier
Commander 6 Cdn Inf Bde. "

4A-124

Pte Otis, N.H.

RECORDED AT CMHQ IN AB 180 HA-124

FIELD GENERAL COURT-MARTIAL

UFA608 (To Hdqrs of AFA81) 40-P & B/1668 (10-43)

4/38B

Convened by Order of Major General P.J. Montague Comdg In charge of Administration CMHQ dated 5 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.
C 103326	Pte	George Henry	Otis	RCAMC on strength 19 Cdn Gen Hosp.

FINDINGS REVIEWED 26 Oct 44 J.C. Campbell Major REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) England on (*date(s)*) 6 & 7 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 A65, 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 56, 63-70, 73, 74, 94, 103, 119, 132.)

JCC 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 JCC 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.)

JCC A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1830 hours trial commences.

JCC A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) JCC 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 90 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

JCC A5. ~~President to accused: Do you object to ..... as interpreter? Ans ....~~ JCC ~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans ....~~ JCC ~~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	D.S. Milligan	CAC	"G" Br CMHQ
Member	Major	A.J. Andreae	RCAMC	19 Cdn Gen Hosp
Member	Lieut	B.L. McLean	RCASC	Patriotic 19 Cdn Gen Hosp
Judge-Advocate	Major	J.C.A. Campbell	RCA	JAG Br. CMHQ
Prosecutor	Capt	R. Dean Wills	RCA	JAG Br CMHQ
Defending Offr	Capt	H.J. McDougall	RCA	Patriotic 19 Cdn Gen Hosp

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 Cons 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.)

JCC A8. The accused ..... before arraignment make(s) ~~are~~ (a) 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 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.)

JCC 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 ~~are~~ 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.)

JCC 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.

4

SCHEDULE.

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

Accused: C 103326 Pte George Henry Otis RCAMC on strength 19 Cdn Gen Hosp.

	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	18 (7)	Not Guilty	Guilty.	
2nd	40 (alt)	Not Guilty	Not Guilty	
3rd	41 (5)	Not Guilty	Guilty	
4th	40 (alt)	Not Guilty	Not 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 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for N/A 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 10 days, of which N/A 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:

JCC To ~~suffer ..... detention for a period of~~ (90) days ~~and to forfeit all service pay for a period of (90) days~~

(Sgd) J.C. Campbell Major Judge-Advocate, if any. 7 Oct 44 Date awarded. (Sgd) D.S. Milligan 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(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 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 on the third charge but do not confirm the finding on the fourth charge - I confirm the sentence

I direct that the accused be not committed to prison or detention barracks for a period further than ..... (1) days.

(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.
C.103326 Pte Otis, G.H.	16 Oct 44	(H.B. Kenner) Colonel, RCAMC C.O., 19 Cdn General Hosp

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

No irregularities or irregularities such as would warrant withholding confirmation if the finding in the third charge and the sentence in the 10 days were upheld.

(K.G. Jordan) Lt-Col. A.J.A. G.M.H.Q.

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.

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 ~~and~~ (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 Yes, evidence myself. 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 1st + 3rd 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 (~~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 D and Ex E 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, mitigation only through my defending officer.(2)
(1. *RP 37(C), 45(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, 116, 119(A), KR Can 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 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.

B 2

CHARGE SHEET

THE ACCUSED, No. C103326 Private OTIS, George Henry, R.C.A.M.C. on strength No. 19 Canadian General Hospital, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Sec. 16 (4) ARMY ACT.

WHEN ON ACTIVE SERVICE, RECEIVING, KNOWING THEM TO BE STOLEN GOODS, THE PROPERTY OF A PERSON SUBJECT TO MILITARY LAW

in that he

at No. 19 Canadian General Hospital between 1 Aug 44 and 25 Sep 44 did receive from No. C122044 Private Davis, J.M. 200 Senior Service cigarettes, the property of Lieut A.R. Martin, RAC a patient in No. 19 Canadian General Hospital, a person subject to Military Law, which he No. C103326 Private OTIS, G.H. knew to have been stolen.

SECOND CHARGE
ALTERNATIVE
Sec. 40. Army Act.

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at No. 19 Canadian General Hospital between 1 Aug 44 and 25 Sep 44 was improperly in possession of 200 Senior Service Cigarettes, the property of Lieut A.R. Martin.

THIRD CHARGE
Sec 41 (4)
ARMY ACT.

WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, STEALING, CONTRARY TO THE LARCENY ACT 1916 Section 2

in that he

at No19 Canadian General Hospital between 1 Aug 44 and 25 Sep 44 stole 500 Sweet Caporal cigarettes, value seven shillings and six pence (7/6d) the property of a person unknown.

FOURTH CHARGE
ALTERNATIVE
Sec. 40
ARMY ACT.

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at No. 19 Canadian General Hospital between 1 Aug 44 and 25 Sep 44 was improperly in possession of 500 Sweet Caporal cigarettes.

H T B Kenner Col

(H.B. Kenner) Colonel, RCAMC
Commanding Officer
#19 Canadian General Hospital.

In the field
30 Sep 44.

Approved on behalf of the Judge Advocate General, Cdn Army Overseas, pursuant to KR (Can) 540 and Overseas RO 4756

4 Oct 44 R C Morden

(R C Morden) Lt-col
AJAG

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

P J Montague

In the Field
5 Oct 44

(P J Montague) Major-General
In Charge of Administration
CANADIAN MILITARY HEADQUARTERS
Convening Officer

J C Campbell Major
Judge Advocate

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.
C-103326	Pte		George Henry	OTIS	RCAMC, on strength #19 Cdn Gen Hosp.

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*) this date endorsed by me, [XXXXXXXXXXXXXXXXXXXX]" 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 ; [XXXXXXXXXXXXXXXXXXX

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr *(RP 95(C))*, any objections *(RP 95(B))*, and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. *(RP 95 fn 1.)* If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. *(RP 122.)* If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. *(RP 60(C), 87(C), 92(C) (D).)*

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. *(See RP 41 fn 3, 46 fn 1, 89.)*

(iii) Evidence of witnesses for accused as to facts or his character or both. *(See RP 46 fn 1.)*

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court *(RP 86(B))*, or to prove previous convictions when accused has called witnesses as to character. *(RP 86(C).)*

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. *(See RP 40 fns 8-12, 87(C), 92(C) (D).)* But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. *(When accused charged jointly see RP 61.)*

(vi) Closing address by Prosecutor. *(See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).)*

(vii) Summing up by JA, if any. *(RP 42.)*

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). *(KR Can 557.)*

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. *(As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).)*

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. *(RP 98(D).)* A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. *(AA 53(8), RP 118(C), MML p 759.)*

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S CERTIFICATE

K.R.(CAN.) PARA 557

I certify that I have this morning examined No. C 103326 Pte. Otis, G.H. of 19th Coln Gen Hosp. and in my opinion he is fit ~~unfit~~ to undergo Trial by Court martial.

Station 19th C.G.H.

Date 7 Oct 44

Mr Littner, Capt
Medical Officer

MFB. 246

JCH

MEDICAL OFFICER'S CERTIFICATE

K.R.(CAN.) PARA.557

I certify that I have this morning examined

No. C 103326 OTIS GH. . . . . .

of # 19 CGH . . . . . and in my opinion he

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

J. B. Trindall Capt.
Medical Officer

Station # 19 CGH. . . . .

Date . . 6 Oct '44 . . . . .

M.F.B.246

E. 3. Mitigation of punishment. Ex. "F" J. C. Campbell maj. Judge advocate

Accused in this case only 19 yrs of age. Enlisted the minute he came of age & volunteered for overseas service. Court had an opportunity of seeing accused & realizes the youth & inexperience of this soldier. Defence contends that this lad has the making of a good soldier. Got off to a bad start. Request Court to carefully consider the value of the articles stolen & take this into consideration when making decision as to sentence.

1.

Pte Otis. G.H.

First witness prosecution

Sgt. George Thomas Hallis, Police Sgt Warwick County Constabulary, duly sworn.

I recognize accused (points) I saw accused on 26 Sep 44 & interviewed him. Lt. Ransberry Admin Offr 19 Cdn Gen Hosp was present. I told him who I was & nature of my enquiry. He said "I'm not mixed up with that." (Defence does not object to statement made by accused prior to caution). Later he said "I did have a few cigarettes." I cautioned him and he went on to make a statement which I took down in writing at his dictation. Lt Ransberry was present throughout interview. When he had finished I read it over to him & he signed it. I recognize this "Ex A" as the statement I took. That is my signature. That is the signature of the accused.

(Defence does not object to admission of statement).

Statement of accused read to Court, marked Ex. A by Court.

X-Exam.

When I appreciated accused liable to be charged I then cautioned him with formal caution.

No re-exam

No questions by Court.

Witness withdraws

(R.P. 93(b) Complied with.

Second witness
Prosecution

Lieut W. M. Ransberry
Admin Offr. 19 Cdn Gen
Hosp. duly sworn.

I recognize accused (points). I recognize Ex. A. Pte Otis, Sgt Hollis myself in my office when he made voluntary statements. The signatures are those of Otis & Sgt Hollis I saw them sign it. The initials are on 3rd para are those of Pte Otis.

No X-exam
No re-exam

Court. — Statement taken on 26 Sep 44.

Witness withdraws.
R.P. 83(b) complied with.

Third witness
Prosecution

Lieut A. R. Martin CASC
19 Cdn Gen Hosp. duly sworn

I recognize accused (points). I was admitted on 8 Sep 44 to hospital. Had 2200 Sweet Caporal, 600 Senior Service & 200 333 cigarettes in my kit. The cigarettes were checked by me a day or two after my arrival, put in my kit bag, the bags were put in kit storage. Approx 22 Sep. Pte Davis & myself went to storage Cupboard. Found all cigarettes & others articles gone. 3 cartons 200 ea Senior service Cigarettes. Gave no Cigarettes away - no permission to anyone to take them.

No X-exam

Court - nil

Witness withdraws
R.P. 83(1) Complied with.

Fourth witness prosecution — C 122044 Pte Davis J. M duly sworn

Warned re incriminating questions, where fresh charges might arise no need to answer.

I recognize accused (points). I sold accused cigarettes in Sep 44. Got 10/- for them. Got them from St. Martin's kit bag. Had no permission to take them. Transaction took place outside & between Wards J & H — about 1900 hrs. I asked accused if he wanted to buy them, he said "yes." At that time had cigarettes in my possession, not on me. Went to utility room to get them. Room is in H ward. Didn't tell accused whose cigarettes they were. He didn't ask me. Took ~~also~~ a few minutes only to go & get cigarettes & return. Not in habit of keeping things in utility room. I was ward orderly in ward H. — accused in Ward J as ward orderly. Never sold accused or gave him any before or since that time. No conversation that I remember regarding price of 10/-. Pte Craig present at time of this transaction. I don't know ~~Sen~~ whether Senior Service are English, Cdn or American

X-Exam:

Never bought or sold any cigarettes to other people on any other occasions.

No re-exam

Court — Sold 10 packets of 20 cigarettes ea for 10/- to accused. The 20 packets were all Senior Service.

Witness withdraws

R. P. 83 (b) complied with

Fifth witness (prosecution). D 125'5'39 S/Sgt Huxley J. C. C. 19 Adm Gen Hosp. duly sworn.

I recognize accused (points). I am head wardmaster. Accused ~~was night~~ Orderly, Ward H from 20 Sep 44. Pte A that day orderly on Ward H for two weeks transferred to Ward J for 1 week, on leave after that. On returning from leave on 20 Sep went to Ward H as night orderly.

No X-exam

Court. nil

Witness withdraws

R.P. 83(b) Complied with.

Sixth witness prosecution.

A117360 Pte Craig W. A., R.C.A.M.C. 19 Adm Gen. Hosp. duly sworn

Prior to witness being sworn, prosecutor states this witness appears in S of C but will give other evidence that did not appear in Summary. Defending officer advised that under R.P. 76 he may ask for adjournment if a postponment of cross-examination if any of evidence adduced takes defence by surprise.

(Sixth witness Cont.)

I recognize accused (points). I was present with Pte Davis & accused when sale of cigarettes was discussed in Sep 44. between H & J Wards. No others present. About 1200 hrs I think it was. Davis asked Otis if he (Otis) wanted to buy cigarettes. Otis said "no" at first then changed his mind & said "yes." Davis then went into H ward & got the cigarettes. I think they were 3 star Yankee cigarettes. I know these cigarettes came from Lt. Morton's kit. I know nothing of Senior Service cigarettes. 10 packages of 20 ea. These were sold to accused for 10/-. I had sold cigarettes to Otis before that. Sold 6 phgs of exports. (Court does not allow witness to state where same obtained on grounds of incriminating answer). I did not tell Otis where I got the 6 phgs of Exports. Was a little argument as to price for the 10 phgs of 20 ea. We wanted 15/- Otis wouldn't pay more than 10/-. He gave no reasons. Davis was carrying cigarettes out in his hands from H ward to meet Otis. ~~in his hands.~~ The cigarettes sold at that time to Otis were to my knowledge kept in Utility room. Sold nothing else to accused at that time, only the cigarettes. Accused did not know where I obtained the cigarettes. Didn't tell Otis where cigarettes obtained. Met accused & Davis, in open, by sidewalk running along front of wards.

X- Exam.

Sold 6 phgs of Exports in Sep. Have bought & sold cigarettes at times in unit, usually pay 1/6 per packet.

No re - exam

Court. Davis collected the 10/- for sale. I

didn't get any of money.

J.A - Davis took me into utility room & showed me the 10 pkgs of 20 ea. They were in the cupboard in the utility room where we keep cups etc. It was in morning of same day of sale transaction that I saw Cigarettes in utility room. The 3 star packet of cigarettes looks like a Chesterfield packet.

Pros. questions witness (by permission of Court).
One pkg Sweet Caporal, one pkg 333, one pouch packet 20 senior service cigarettes produced to witness. I identify one pouch packet 20 senior service cigarettes as similar to those sold to accused by Davis & himself. marked Ex. "B1".

No X- exam or above by defence or Court.

Witness withdraws.

R. P. 73 (1) Complied with.

Court adjourns 2015 hrs to 0900 hrs 7 Oct 44.

Court reopens 0900 hrs 7 Oct 44 pursuant to adjournment, same members present.

First Witness Defence — C 103326 Pte Otis S. H. accused, duly sworn.

I purchased cigarettes from Pte Davis. They were Senior service. Paid 10/- for them. bought no cigarettes from no one else. I recognize Ex. "A". Davis had cigarettes from time I knew. In my statement Ex A I said 'I guessed they were stolen.' When I first bought them I didn't know they were stolen but on 26 Sep at time of questioning I knew the

Service cigarettes were stolen. I did not know this before. I took seven Caporal cigarettes (around 5'10 of them) from a kit bag in the store-room. I didn't know whose kit bag it was - it was too dark to see. In my statement I said these cigarettes belonged to Capt Crane. I didn't know Crane had left hospital.

X-Exam I fixed price of cigarettes I bought from Davis. He wanted 15/- I said I would give him only 10/-. The transaction took place about 1900 hrs between J & H wards on the sidewalk. Never bought cigarettes from Davis before this. Never saw Davis's service cigarettes before. Don't know if cigarettes are English, Can or American. Took about 10 min to complete transaction. I met Davis outside ward - Wheeling food wagon. He asked me if I wanted some cigarettes. I knew he had just received cigarettes from home & asked if he would sell some. Davis went back & got cigarettes from ward. I was working in J ward at that time. Never bought cigarettes from anyone else. I don't remember buying 6 packets from of Exports from Craig. I have heard usual price for cigarettes is 1/6 for 25. I didn't pay Davis; Craig received the money as I didn't have change to give Davis. Gave money to Craig. It was later in the evening when I paid Craig. In our living quarters.

When I took 5'10 sweet Caporal cigarettes that is Pte Ramsey took them out of kit bag which he opened. It was in utility room. I held flash light so Ramsey could see. He kept 250 & I kept 250 cigarettes.

Re-exam - I owed Craig some money. Davis had no change. I gave money to Craig & he was to make change & pay the 10/- to Davis.

Court - I had smoked all Davis' service cigarettes by time statement taken. We were in guardhouse, Davis & I when we discussed what had happened to cigarettes & it was then I knew they were stolen - It was the night before I was questioned that I talked to Davis in guardhouse.

Witness resumes seat.

R.A.F. 83 (b) Complied with.

Summing up by prosecution.

The J.A will instruct Court on law. I would like to draw to Court's attention the legal basis of these charges, on which on 1st charge pros. must prove good stolen. We have Lt. Martin's evidence that 600 S.S. cigarettes were stolen from him. Davis (accused) states he took cigarettes from his bag & Lt. Martin & he sold them same cigarettes from to Otes. The cigarettes were also shown to be the property of a person subject to military law. I refer to Para 94 M.M.L 73 re guilty knowledge (read.) Here we have one isolated transaction, for if we accept evidence of accused no other buying or selling of cigarettes although some evidence Craig sold 6 pkts & accused.

On night in question no doubt of sale. Met outside wards, haggled over price but settled fairly quickly & transaction concluded. Submit Caveat emptor applies, although used in reference to Contracts. accused states he never saw Senior Service cigarettes before, that he knew Davis had received cigarettes from home & might sell some. From all the circumstances I submit Court can infer guilty knowledge. Accused now attempts to explain statement. At time statement taken accused offered no explanation regarding purchase of these cigarettes. Fact accused knew Davis went into H ward, came out with cigarettes, no explanation offered supports fact he not only "guessed" but knew" these cigarettes stolen.

On third charge accused admits holding light while Pte Ramsay opened kit bag & took cigarettes. They then shared cigarettes between them. Pte, accused, is a principal in the theft of the Issued Capstan cigarettes.

Reference to page 1263 Stones Justices Manual re charge of stealing property of a person unknown. Submit on own admission accused guilty of 3rd charge.

Submit that no evidence to support alternative charges if Court unable to find guilty on 1st, 2nd charges as if Court can no guilty knowledge then possession proper. On 4th charge there is evidence to support conviction if Court unable to

find accused guilty on 3rd charge. Some conflict as to time of cigarette transaction. It is not sufficient to upset the main facts which are not supported by the evidence.

Summing up by Defence.

Att as app. B

Summing up by Judge-Advocate.

Att as app. C

Ex. A.

Pt. C. 103326 George Henry OTIS. "Otis"
No. 19 Canadian General Hospital. J.H. Campbell Major Judge Advocate
Stated after being cautioned: G.H.O.

I have nothing to say about the theft in hand H except that I admit buying 200 Lemon Service cigarettes from Davis for 10/-.

On this occasion Davis asked me if I wanted some cigarettes he did not tell me where they were from, but I guessed they were stolen from H. hand.

Two weeks ago I gave Pt Craig 5/- or 10/- for a shirt. He did not tell me where he had it from and I didn't ask him.

About six ~~two~~ G.H.O. weeks ago Pt. Ramsay and myself were on night duty in hand H and we went to the store room and took a box which we thought contained cigarettes. We took it into the wood and when we opened it we found that it contained a vase. We put it in the utility room. We then went back to the store room and took 500 cigarettes between us, they were Sweet Caporal. We had 250 each. I think the vase and the cigarettes belonged to Lt. Cram.

G. H. Otis

Statement taken by me and read over to the above named at Mt Forest on 26/9/44. before he signed same.

[illegible] Pt 64

Pte. C. 103326 George Henry OTIS,
No. 19. Canadian General Hospital.

STATES, after being cautioned :-

I have nothing to say about the thefts in Ward "H" except that I admit buying 200 Senior Service cigarettes from Davis for 10/.

On this occasion Davis asked me if I wanted some cigarettes, he did not tell me where they were from, but I guessed they were stolen from "H" Ward.

Two weeks ago I gave Pte. Craig 5/. or 10/. for a shirt. He did not tell me where he had it from and I did'nt ask him.

About six weeks ago Pte. Ramsey and myself were on night duty on Ward "H", and we went to the store-room and took a box which we thought contained cigarettes. We took it into the ward and when we opened it we found that it contained a vase. We put it in the utility room. We then went back to the store-room and took 500 cigarettes believing they were Sweet Caporal. We had 250 each. I think the vase and the cigarettes belonged to Lt. Crgd.

(Signed) G.H. OTIS.

Statement taken at Wareton Green on 26/9/44 by me, and read over to the above named before he signed same.

(Signed) G.F. Hollis Sgt.64.

"B" J C A Campbell Maj
Judge Advocate

If it please the Court - (Pte Otis)

The accused, Pte Otis is charged with having received from Pte Davis, 200 Senior Service cigarettes the ppty of Lieut Martin, which he knew to have been stolen.

Pte Craig in his testimony swore that Pte Otis was not told where the cigarettes came from and the sale was completed in the open space between the wards.

Pte Davis swore that he sold the cigarettes to the accused for 10 shillings. Pte Davis stated that the accused did not know where the cigarettes came from and he did not tell him that he had stolen the cigarettes - burden of proof is again ~~[illegible]~~ on prosecution

It is quite a common practice for the troops to buy and sell cigarettes among themselves, and the defense contends there is no onus on the soldier making the purchase to enquire just where and how the seller came into possession. The accused was acting in a reasonable manner and quite within his rights. Like all know that one of the governing facts in the sale of the month of time to [illegible] [illegible]

With reference to the 200 Sinut Caporal, the accused took these from the store room on the assumption that they were abandoned property, and had been left behind by Lieut or Capt Cram. We are all well aware that cigarettes are not returned to Canada and the night orderlies believing these fact divided them equally between themselves. Is there anything strange or unusual in this action.

It is the contention of the defense that the accused acted in an ordinary way and did not feel that he was doing any wrong and in view of the facts and his explanations is entitled to an acquittal.

It is respectfully submitted that the accused told a straight forward story to the police, when questioned in connection with the loss of these cigarettes. If he had anything to hide he would have reserved his defense and I contend that it would be absolutely impossible to convict or even charge him on the evidence. Instead

of doing this Pte Otis told all he knew about this unfortunate occurrence in the hope that it might be cleared up and the culprit or culprits punished.

X On the statement made to the police and marked exhibit A it is the contention of the defence that the words "I guessed they were stolen from Ward 6," meant that when he was questioned by the police he then suspected that the cigarettes had been stolen and he had been led up the garden path.

"C"
J C Campbell
Judge advocate.

Summing up by Judge Advocate

The Court still has in mind the Summing up made by myself in the Chisholm case. As the evidence has been carefully & competently discussed and reviewed by the Prosecuting & Defending Officers I will not take up the time of the Court with a lengthy summation. I however wish once again to stress the following points prior to the Court closing to consider its findings.

(a) Refer Court to M M L 22 para 36; M M L 124 paras 65 & 66 regarding the charge of Receiving.

(b) Alternative charges — cannot make a finding of guilty on both but on one only.

(c) Presumption of Innocence of accused until proven guilty. Onus on prosecution

(d) Benefit of reasonable doubt to be resolved in favour of accused.

(e) Military knowledge of Court used to determine improper possession.

(f) Court to make its findings from evidence adduced at trial — must not allow anything heard before trial to influence decision

(g) Judicial confession made by accused — (Prosecuting Officer requests J.A. to explain effect of such confession to Court.).

In accordance with R.P. 64 (b) the Court consider it necessary to sit after 1800 hrs 6 Oct 44 owing to non-availability of one of the witnesses for the prosecution on 7 Oct 44

D S Milligan Maj

J C Campbell Major
Judge Advocate

For disposal of Exhibits (B.1.) see record of evidence FGCM Pte Ramsay B.J.

D S Milligan Maj

J C Campbell Major
Judge Advocate

M.F.M. 6
(A.F.B. 122)
500M—11-41 (2468)
H.Q. 1773-39-1652

No. C.103326 Name Otis G.H. Sqn., Battery, or Company Corps Date of enlistment 13-4[illegible]-43 G.C. Badges Tradesmen's Rates of Pay

No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. B.C. Archibald, Maj. for C.O. 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
U.K.	21.5.44	Pte.		A.A.40-Answered in a disrespectful manner when spoken to by a sup. officer.	W/Cdr. Pattison JD	Admonished with 7 dys C.B.	22 May 1944	B.C. Archibald Major.	A.C.H.
U.K.	6Sep.44	Pte.		A.A.11-Neglectin to obey Pt.I Orders .	Cpl. MacDougall.	3 dys. pay-149(2)	7Sep'44	Col.H.B. Kenner. B.C.A.	

CERTIFIED TRUE XXXX EXTRACT FROM THE REGIMENTAL BOOKS IN MY CUSTODY.

30 Sep'44. R Bobrchnbach major
Registrar No. 19 Cdn.Gen.Hosp.
Officer having custody of
Regimental Books.

"E"
J C H Campbell major
Judge advocate

(P.T.O.)

"D" J.C. Campbell major judge advocate

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).*
C.103326	Pte.	OTIS G.H.	No. 19 Cdn.Gen.Hosp.RCAMC

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.A.40 — 1 times.

For A.A.11 — 1 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 _____ 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 10 days in military custody, *i.e.*, 0 days in open arrest, 10 days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 19

6. The date of his attestation ~~calling up for military service~~ is 13-4-43

7. The service which the accused is allowed to reckon is _____

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.*

(21114) Wt.8670/668 100,000 4/42 A. & E.W.Ltd. Gp.698 Forms/B.296(War)/2
(22459) Wt.29256/1873 60,000 9/42 " "

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 30 day of September 1944

B. Silverbach Major
Registrar No. 19 Cdn. Gen. Hosp.

SUMMARY OF EVIDENCE

IN THE CASE OF C103326 Pte. Otis. G. H.
A SOLDIER OF THE CANADIAN ARMY OVERSEAS.

CHARGES: First Stealing
Second Improper possession (alv.).
Third Stealing.
Fourth Improper possession (alv.).
~~Fifth~~
~~Sixth~~

BY DIRECTION OF THE COMMANDING OFFICER, THE EVIDENCE IS TAKEN ON OATH.

D139130 Pte. GRIMBLE John Leslie, duly sworn as shorthand reporter.

(SEE TRANSCRIPT OF EVIDENCE ATTACHED).

FIRST WITNESS FOR THE PROSECUTION

GEORGE THOMAS HOLLIS, Police Sgt, Warwicks County Police, attached to Coleshill, having been duly sworn, states:
On the 26 Sep 44, I saw Pte. Otis at No. 19 Canadian General Hospital in the presence of Lieut. W.M. Ransberry, I told him who I was and that I was making enquiries respecting thefts from Ward "H". I said to him "Do you know anything about these", and he replied "I am not mixed up with that". Later he said "I did have a few cigarettes. I formally cautioned him and he went on to make a statement which I took down in writing at his dictation. When he had finished, I read it over to him, and after initialling one alteration, he signed it. I produce the original.
(ORIGINAL STATEMENT RECEIVED AND MARKED EXHIBIT"A")
I searched the kit of Pte. Otis with Lieut. Ransberry, the accused being present. I found in his possession, an officer's shirt (Exhibit "F") and a pair of puttees (Exhibit "M") These have been identified by Lieut Martin as his property. A flower vase referred to in the statement made by Pte. Otis, I now produce, having been identified by Pte Otis in my presence as the one referred to in his statement.
(VASE RECEIVED AND MARKED EXHIBIT "B"

Question to witness by accused.
Are you sure the puttees came from my kit?

Answer:
The puttees did not come from your kit, they came from Davis' kit.

Question to Accused:
Do you wish to ask the witness any further questions:

Answer
No.

(G.T. Hollis) Police Sgt.
Warwicks County Police.

SECOND WITNESS FOR THE PROSECUTION

Statement of Lieut. A.R. MARTIN CIC, a patient in No. 19 Canadian General Hospital. (STATEMENT PRODUCED AND MARKED EXHIBIT "X")

I certify that the attendance of this witness is not readily procurable due to his physical condition:

R. Dean Wills.
(R. Dean Wills) Capt.
Officer taking
SUMMARY OF EVIDENCE.

I do not require the attendance of this witness for the purpose of cross-examination.

(Accused).

H.H. Elliott.

THIRD WITNESS FOR THE PROSECUTION

Statement of Lieut. Walter Melville RANSBERRY, Administration Officer, #19 Canadian General Hospital. (STATEMENT PRODUCED AND MARKED EXHIBIT"Y")

I certify that the attendance of this witness is not readily procurable due to military exigencies.

R. Dean Wills.
(R. Dean Wills) Capt.
Officer taking
SUMMARY OF EVIDENCE

I do not require the attendance of this witness for the purpose of cross-examination.

(Accused).

H.H. Elliott.

FOURTH WITNESS
FOR THE PROSECUTION

A117360 Pte. CRAIG Wilfred Alvin, RCAMC #19 Canadian General Hospital, having been duly sworn, states:

Question: Did you know the accused, Pte Otis?
Answer Yes I did, (indicated)
Question One of the shirts in Exhibit "F" has a mark on it "London Town"?
Answer Yes.
Question Did you have that shirt in your possession at any time?
Answer Yes I did.
Question What did you do with it?
Answer I sold it to the accused for 10 shillings.
Question At the time you sold it to him, did you have any conversation with him?
Answer No, just asked if he wanted to buy a shirt.
Question Where did you get this shirt.
Answer It was amonst the loose clothing on the floor of the utility cupboard.
Question Did the accused know from where you had obtained this shirt.
Answer No
Question Did you tell him it was your own shirt.
Answer Yes I did.

W A Craig

(A117360 Pte. Craig W.A.)
#19 Canadian General Hospital.

FIFTH WITNESS FOR THE PROSECUTION

C122044 Pte. DAVIS Malcolm Joseph, R.C.A.M.C. #19 Canadian General Hospital having been duly sworn, states:

Question: Do you know the accused Pte. Otis?
Answer: Yes (indicating him)
Question: Did you sell the accused any cigarettes at any time?
Answer: Yes.
Question: What type of cigarettes were they, and when was it?
Answer: 10 packages of 20 Each "Senior Service" brand during the month of September 1944, and I received 10 shillings for them.
Question: From where had you obtained these cigarettes?
Answer: From Lieut. Martin's kit bag, without his permission.
Question: Did Pte. Otis know from where you had obtained these cigarettes?
Answer: No.
Question: What did you tell him, if anything, about the cigarettes.
Answer: I did not tell him anything.
Question: Was there any conversation before you sold him the cigarettes about these cigarettes?
Answer: I just asked him if he wanted to buy some cigarettes and on his saying yes, I went and got them, gave them to Pte. Craig and who gave them to Otis.
Question: Had you sold Otis any cigarettes before this?
Answer: No.
Question: Have you sold him any since?
Answer: No.
Question: Is that the only transaction you have had with Pte Otis?
Answer: Yes.
Question to Accused: Do you wish to ask this witness any questions?
Answer: No.

(Pte. Malcolm Joseph Davis)

5.

Statement of

Sixth Witness for the Prosecution.

D125539 S/Sgt. HUXLEY John Charles Edward, R.C.A.M.C. #19 Canadian General Hospital

~~having been duly sworn states~~ R.D.W.

I am the Head Wardmaster of the #19 Canadian General Hospital. One of the wards in my care is Ward "H", which conteins officer patients. I received a complaint that some articles were missing from an officer's kit. As a result I interviewed Lieut Martin and he gave me a list of articles missing from his kit. I reported the matter to R.S.M. Richard. When Officer patients were admitted to Ward "H" their personnel kit was stored in the utility cupboard next to the front door of the ward. Some of the personnel kit was also kept under the officer patient's bed. The door to this utility cupboard was not kept locked, and anyone could have had access to it. The ward orderlies of ward "H" were Ptes. Otis, Craig, Davis and Chisholm. Pte. Otis was the night orderly. It was from this ward that the articles were missing. As a result of my investigation I learned that Pte. Ramsey had visited ward "H" on one occasion when Pte. Otis was on night duty. When an officer patient wants anything of his kit, it is the duty of the ward orderly to get it from the utility cupboard and bring it to him and to return it to the utility cupboard when the officer is through with it.

~~Question: To accused~~ ~~Do you wish to ask this witness any question.~~
~~Answer:~~
~~Question: By accused~~ ~~Yes I do.~~
~~Answer~~ ~~Was it the night Ramsey was in the ward the night after the articles were stolen.~~
R.D.W. ~~Question:~~ ~~I do not know the actual date.~~
~~Answer~~ ~~Was Ramsey on leave at that time?~~
~~This was before he went on leave.~~
~~Question: To accused~~ ~~Do you wish to question the witness further?~~
~~Answer~~ ~~No.~~

I certify that the attendance of this witness is not readily procurable due to military exigencies.

R. Deauville. Capt.
Officer taking Summary of Evidence.

J.C.E. Huxley

(J.C.E. Huxley) S/Sgt. RCAMC
#19 Canadian General Hospital.

The accused is cautioned 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 declines to make a statement or call witnesses.

G. W. Fox

I hereby certify that the foregoing SUMMARY OF EVIDENCE consisting of Six pages was taken down before me in the presence of the accused, and that R.P. 4(c)(d)(e)(f) and (g) were complied with.

R. Dean Wills.

(R. Dean Wills)Capt.
Officer detailed to take
Summary of Evidence.

In the field

29 Sep 44.

Ex "C"

SECOND WITNESS
FOR THE PROSECUTION

Lieut. ALFRED REMUS MARTIN, 12th Canadian Arm'd Reg't. (T.R.R.), a patient in No. 19 Canadian General Hospital, having been duly sworn, states:

I was admitted to #19 Canadian General Hospital on 8th September, 1944. My kit consisting of one bed roll, 2 kit bags, and one officer's haversack. On or about 17th September, my kit was brought to me at my request in Ward "H" to be repacked. The kit was repacked by Pte. Davis, who was ward orderly, and myself. My kit was then taken and stored in the cupboard of Ward "H", which was used for that purpose. The cupboard is on the right of the entrance to Ward "H". The door to the cupboard opened on the outside of the building. It has a yale lock, but there is no key, so the door was left unlocked. On or about 22 September, my trunk arrived from No.1 Kit Storage, and accompanied by Pte. Davis, we went to the cupboard to get my kit out so that we could pack it into my trunk, which had been delivered to Ward "H" upon my request. At that time, I found my one kit bag wide open, but the other had been tied up again.

The following articles were missing from my kit:
1 carton of Sweet Caporal cigarettes, containing 1,000, value 15/-
4 cartons of Sweet Caporal cigarettes, 300 in each carton, value 17/6d.
3 cartons of Senior Service cigarettes, 200 in each carton value £1/2/-
1 carton of Three Threes cigarettes, containing 200, value 7/-
60 Gillette razor blades, value 15/-
1 shaving stick, Yardleys make, value 2/6d
6 Williams shaving sticks, value 7/-
1 Ivory pocket knife, value 10/6d
4 pocket combs, value 4/-
2 London Town shirts, value £2, with MAR printed inside.
1 pr. brown kid gloves, make unknown, unlined, value £1.
1 pr. braces, value 5/-
3 films, two .120mm, one .620 mm
2 boxes .38 revolver ammunition containing 12 rounds each, value 3/-
1 pr. puttees, marked L & R with indelible pencil, value 3/-
There was also one box containing soap, tooth-paste, shaving sticks, which were returned to me two days later by Pte. Craig.
I reported the theft to the Nursing Sister in the Ward, who in turn passed it on to the Administration officer. On the 27th September 1944, I was shown the following articles, which I identified as my property:
17 pkts of Sweet Caporal cigarettes containing a total of 425 cigarettes.
2 pkts of Senior Service containing 20 each.
1 pkt. Three Threes containing 20.
2 shirts.
3 pkts Gillette razor blades containing 5 each.
2 boxes of .38 revolver ammunition.
1 pr of braces.
2 films, 1 comb, two boxes of matches and one pr of puttees.
(THE ABOVE ARTICLES WERE PRODUCED AND MARKED EXHIBIT "C" TO "M" INCLUSIVE).

Ex. "X"

SECOND WITNESS FOR
THE PROSECUTION
(Continued)

Question: To witness: Can you identify the Sweet Caporal Cigarettes?
Answer: No, other than that they are similar to the ones I lost.
Question: Can you identify the Senior Service Cigarettes?
Answer: No, other than that they are similar to the ones I lost.
Question: Can you identify the Three Threes Cigarettes?
Answer: No, other than that they are similar to the ones I lost.
Question: Can you identify the two packages of Gillette Razor Blades?
Answer: No, other than that they are similar to the ones I lost.
Question: Can you identify the two boxes of ammunition?
Answer: These are the same type as issued to our regiment and were issued as my personnel property, and which I had.
Question: Can you identify these shirts as being your property?
Answer: One is mine and has my mark on it "M.A.R.) and the other, bearing no mark is of similar brand and name to the one I lost.
Question: Can you identify these pair of braces?
Answer: These are similar to the ones I lost.
Question: Can you identify these films.
Answer: Yes, they are my property.
Question: Can you identify this comb?
Answer: It is the same make as I have in my kit.
Question: Can you identify the matches?
Answer: They are the same make as the ones I still have in my kit.
Question: Can you identify these puttees?
Answer: Yes, they are my property.

Question: To accused: Do you wish to ask this witness any questions?
Answer. No.

(A.R. Martin) Lieut.
12 Canadian Arm'd Reg't. (T.R.R.)

Ex. "Y"

THIRD WITNESS FOR THE PROSECUTION — Lieut. WALTER MELVILLE RANSBERRY, Administration Officer of No. 19 Canadian General Hospital, having been duly sworn, states:

During the investigation into these charges, I was present, with Sgt. Hollis of Warwicks Constabulory, who I called in to help clear up this matter, during the interrogation of the accused. I was present when the Accused made his statement.

Question: to Witness — I produce and show you Exhibit "A" reported to be a statement signed by the accused. Was this the statement made in your presence?

Answer: Yes.

Question — Was this signed in your presence?

Answer: Yes. Sgt Hollis drew my attention to the signature at the bottom.

Question: — I produce and show to you Exhibits "C" to "M" inclusive. What do you know about these articles.

Answer: — These exhibits, some of them were found in the accused's kit when we made an inspection and some of it was subsequently found in the home of the James' family at No. 16 Leaford Road, Lea Hall, Birmingham.

Question: — Were you present at the time these articles were found?

Answer: — I was present, with Sgt. Hollis, when all these articles were found. Sgt. Hollis and I, on return to my office, with these articles, labelled them and an inventory was taken. Then Sgt. Hollis turned them over to my custody. I put them in my strong box, locked it, where they have been since that time. No one else has access to my strong box. These are definitely the articles recovered and placed in that strong box.

Question: to accused: Do you wish to ask the witness any questions?

Answer: by accused: No.

W.M. Ransberry Lt.

(W.M. Ransberry) Lieut. -
Administration Officer,
#19 Canadian General Hospital.

I request that my Commanding Officer appoint an officer to defend me at my forthcoming trial, by Field General Court Martial.

I am aware that the Prosecuting Officer is an Officer with legal qualifications, and I hereby waive the seven (7) days notice, to which I am entitled by R.P. 89.

Dated. Oct 1/44 . . . . . G. H. Otis . . . . . .

W. M. Rankeny Lt
Witness:

I hereby acknowledge receipt of copy of Charge Sheet, and Summary of Evidence in my case.

Dated: Oct. 1/44 . . . G. H. Otis . . . . . .

Witness. W. M. Rankeny Lt

4X-101.

Pte. Ostly. BC

SCHEDULE.

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

Accused: M.17258 Pte Barney Christopher OSTBY LER "DGD"

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 5(7)AA	"DGD" NotGuilty	"DGD" NotGuilty	"DGD"
2nd Sec 12(1)(R)C	"DGD" NotGuilty	"DGD" Guilty	"DGD"
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 Nil beginning on (date) N/A "DGD" (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. "DGD" (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:

Three (3) yrs penal servitude.

(Sgd) ~~Judge-Advocate, if any~~ "DGD" Date awarded: 27 Jan 45 (Sgd) "D. G. Duncan 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.)

I reserve the finding and sentence for confirmation.

Date 30 Jan 45 (Sgd) "HP Bogert Brig Commanding 2 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 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 findings and sentence and I direct that a part of the sentence not exceeding two years shall be served in a military prison"

~~I direct that the accused be undergo the period of detention barracks until he has undergone a total of~~
(1. AA 57A. Delete if not used.)

Date 7 Mar 45 (Sgd) "E.G. Weeks" Major-General
IC Administration.
Commanding CANADIAN MILITARY HEADQUARTERS
Confirming Officer.

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

Accused.	Date.	Signature of Offr.
M-17258 Pte Ostby, B.C. L Edmn R	11 Mar 45	Gabriel Capt. 2 i/c 2 Cdn Reallocation Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Certified true copy
(DM Chatterton, Maj.
Cdn Sec 2Sch AFHQ

4X-101

LFES 45

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3) 40/P.M.R.1808 (3864)

Convened by Order of Brig M.P. Bogert Comd 2 Cdn Inf Bde dated 27 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.
M.17258	Private	Barney Christopher	OSTBY	LER

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date) 27 Jan 45 "DGD"

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. "DGD"

(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 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 52, 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) "DGD" The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and "DGD" 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 1915 hours trial commences. "DGD"

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) "DGD"
(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 xxx as interpreter? Ans xx "DGD"
~~The Interpreter is sworn.~~(1). Do you object to 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 [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 "DGD"(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) "DGD"
(*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 ? "DGD"
Ans Yes Are they witnesses as to character only ? Ans No "DGD"
(*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, R6(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 [are(are) recorded in Part I of the Schedule.(2) The Court is re-opened. "DGD"
(*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 findings 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.(2)~~ "DGD"
(*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~~ "DGD"
(*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 A and Ex B respectively.(3) "DGD"
(*1. MFB 255 or AFB 296. 2. MFM s. 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 "DGD"
(*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)~~ "DGD"
(*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, 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.

COUNTER NUMBER 52751.8

HOUR 1035

OPERATOR'S INITIALS AW

RELIEVING OPERATOR LB

1030 ---------- 23 Feb 45.

NEUROPSYCHIATRY

M - 17258 OSTBY, B.C. Pte. (L.E.R.) Central Gd Room.
Age: 25. Cat: M-2
Enlisted: 25 April 40. U.K. Aug 40 Med: Aug 43 (Sicily)

Referred for NP opinion with the following information:

Extracts from FGCM proceedings re M-17258 Pte Ostby, B.C. (L.E.R.)

Capt C.F. EGAN, L.E.R. having been duly sworn states:-

I am Capt C.F. EGAN, Medical officer of the L.E.R. Approx 22 Jan 45 the accused reported to me on sick parade complaining of terrible nightmares and of being very nervous. I summoned his Cpl for objective evidence concerning the state of the accused. The Cpl stated that the accused every now and then raved in his sleep and had on one or more occasions been found in the process of loading fire-arms and immediate awakening action was taken. About that time the Reg't received orders to move and it was understood that the accused would report to me at our arrival at a new position. This he did not do. Had he reported to me I would have had him sent in right away for a psychiatrist's opinion. It would have been necessary to evacuate the man for this examination

No cross examination by the Prosecution.

Question by the court:

Q. What is wrong with the accused?
A. The accused has state of nervous instability, of a temporary or permanent nature. However, his intelligence is such that he knows the difference between right and wrong.
Q. Is this the first time that the accused has been brought to medical attention?
A I am not sure of it, but is is the first time it has been brought to my attention. I have been with the Reg't since 1 Jan 45.
Q. Would shellfire unhinge the accused to such an extent that he could not carry out his duties?
A. Such is well within the realm of possibilities, but cannot be stated positively without objective observation of his behaviour under such circumstances. That is why in all cases possible a Medical Officer values a description of behaviour from the soldier's superior officer.
Q. Is there any possibility of similating the symptoms and escaping detection by the unit M.O.?
A. Yes.

Plea for mitigation of sentence in the case of M-17258 Pte Barney Christopher Ostby of the Loyal Edmonton Reg't.

Pte Ostby enlisted on the 25 April 40 and proceeded overseas in Aug of the same year. He joined the L.E.R. in Italy in Aug 43. Thmough he has spent some time in hospital with jaundice, he still has seen much action in the toe oi Italy and in the last three or four months up here.
This man has previously complained to the regimental M.O. of his nerves and on 22 Jan 45, the day the unit moved from reserve to the area, he visited the M.O. and was given to believe that his case was one for a specialist. However, in the bustle of the move, he let it ride, intending to carry on and do his best until further opportunity for a check up presented itself.
Unluckily, before this opportunity came, he found himself involved in an attack with D Coy. Again he resolved to do his best, but under the shell fire, he found it impossible to go on. He informed the L/Cpl of his section of the fact and received no further command forward so returned to his guard position.
This man is married with one child, wife and child living in England, these people will be bearing the brunt of the punishment. Therefore, in view of the above facts, I ask the court for leniency in this man's case.

NP Examination:

Complaints: Nervousness under shellfire.

History: This man arrived in this theatre in Aug 43 and saw action in Italy with the

...../2

He states that he has been nervous in action all the time but was getting progressively worse. He states he reported to his M.O. in the rest area and "thought he was to be evacuated". The Reg't moved forward at this time so he was not sent out of the lines due to the move. In action he states that he was in one house and when the section moved forward to another house he "just couldn't go any further" and after going out of the house he returned to his post and stayed there instead of moving forward with his section. He has no physical complaints.

Examination: PE essentially negative. Low average intelligence, M score 91 with 24 on first three tests. Hands cold and moist with fine tremor of the fingers. Slightly tense and restless during the interview. Startle reaction slight. Non-psychotic.

Diagnosis: Psychoneurosis - Anxiety state - chronic.

Opinion: This man is unfit for combat duty. He should be reboarded M2 - S3 and refer to SPO. He is fit to stand trial and serve punishment, however, in view of the circumstances of this case the court should grant whatever leniency it pleases in the final disposal.

"J.J. Weber" Major
(J.J. WEBER) Major
Neuropsychiatrist
2 Reallocation Centre

JJW/RJM

CHARGE SHEET

THE ACCUSED M17258 Private Barney Christopher OSTBY, of The Loyal Edmonton Regiment, a soldier of the Canadian Army Overseas, CMF, On Active Service, is charged with:

1st charge
Sec 5 (7)
Army Act.

WHEN ON ACTIVE SERVICE MISBEHAVING BEFORE THE ENEMY IN SUCH A MANNER AS TO SHOW COWARDICE

in that he

In the Field, In Italy, while in a fup at approximately 1945 hrs 24 Jan 45 waiting to attack S. PICCIBITTI and when under the enemy's fire, said to B.137069 L/Cpl Ohert, J.H. "I can't take it" or words to that effect, and then ran to the rear and hid in a slit trench.

2nd Charge
(Alternative)
Sec 12 (1)(a)
Army Act.

WHEN ON ACTIVE SERVICE DESERTING HIS MAJESTY'S SERVICE

in that he

In the Field, on 24 Jan 45, absented himself from No. 17 platoon with intent to avoid taking part in active operations against the enemy.

In the Field
27 Jan 45

"J.R. Stone"
(J.R. Stone) Lt-Col
Officer Commanding,
The Loyal Edmonton Regiment.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
27 Jan 45

"W.P. Bogert"
(W. P. Bogert)
Commander
2 Cdn Inf Bde.

"DGD".

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40/P&S/1697 (2803)

(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.17258	Private		Barney Christopher	OSTBY	LER.

CONVENING ORDER.

"DGD"

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 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.~~) "MPB"

(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 xxxxxx hereto.~~ "MPB"

(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.~~ "MPB"

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

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	D. G. Duncan	Staf of C

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	B. F. Chapin	PPCLI
Lt	J. A. Shirkie	PPCLI

WAITING MEMBER.

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

~~JUDGE ADVOCATE.~~ "MPB"

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

On Active Service in the Fd

in	(Signed personally. RP 105 fn 2.)	(Rank.)
(Country.)		
Italy	"M.P. Bogert" (M P Bogert)	Brig

Date 27 Jan 45

Commanding 2 Canadian Infantry Brigade.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

"DGD"

MEDICAL CERTIFICATE

R.R. (Gen) 557

THIS IS TO CERTIFY THAT M.17258 Private OSTBY, B.C. LER was EXAMINED BY ME ON THIS DATE AND IN MY OPINION IS FIT TO UNDERGO TRIAL BY FIELD GENERAL COURT MARTIAL.

"C.F. Egan"

In the Field.
27 Jan 45

(C.F. Egan) Capt & MO
The Loyal Edmonton Regt. "DGD"

D 2.

OPENING ADDRESS - PROSECUTOR

In the case of: M17258 Pte Ostby, B.C.

I propose to first call the Coy. Commander of the accused to explain to the Court what the tactical situation was at the time of the alleged offence.

I will then call the section leader and the 2 I/C of the section with which the accused was serving, and two other soldiers, to prove that the accused is guilty of the offence stated in the first charge.

"T N Adamson Lieut".

"DGD"

Page 1

The Court think it expedient to sit after six o'clock - the afternoon owing to the tactical situation.

Evidence in the case of M.17258 Pte Ostby, B.C. L.E.R.

1st Witness for the Prosecution

Capt J. Harper Prowse L.E.R. having been duly sworn states:-

I am Capt J. Harper Prowse 2 i/c "D" Coy L.E.R. On 24 Jan 45 I was commanding "D" Coy L.E.R. At approx 1900 hrs I ordered Lieut Harris to take 17 Pl. with a WASP ~~flame~~ flame thrower under command, and attack CASA RICCIBITTI a known enemy position occupied by approx 25 German troops. The fire plan included 5 minute concentration of 3" and 4.2" mortars on Casa Riccibitti which was about 500 mitrs from "D" Coy H.Q. "H" hr. was set at 1945 hrs. At 1935 hrs Lieut Harris and his Pl moved into a F.U.P. about 100 yds. west of Coy H.Q. At approx 2015 hrs. Cpl Silver, who was in charge of the assault section of 17 Pl., having completed their attack and returning to Coy H.Q., reported to me that two men were missing from his section.

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

No X exam "DGD"

"DGD".

2nd Witness for the Prosecution

M.10510 A/Cpl Silver N. L.E.R. having been duly sworn states:-

I am M.10510 A/Cpl Silver N. 5 Sec 17 Pl "D" Coy. LER. On evening 24 Jan 45 at approx 1930 hrs. the Pl was assembled and were told, that they were going to attack Casa Riccibitti, by Lieut Harris. I checked my sec and found that Pte Ostby was present. At approx 1935 hrs. we moved off to the FUP. At approx 1945 hrs. L/Cpl Short, 2 i/c of the section reported to me that Pte Ostby was missing. I checked the sec and verified the above statement. When we went to the attack Pte Ostby was not with us. We returned to the Pl. billets between 2015 and 2030 hrs. I saw Pte Ostby in the room and reported to Coy H.Q. that Pte Ostby did not go into the attack with us. I recognize the accused.

No x exam "DGD"

R.P. 83 (b) has been complied with "DGD".

3rd witness for the Prosecution.

B.137009 L/Cpl Short, J.H. LER having been duly sworn states:-

I am B.137009 L/Cpl Short J.H. 2 i/c 5 Sec 17 Pl "D" Coy LER. At Approx 1945 hrs 24 Jan 45 while in our FUP our mortar fire was being laid on the objective. There was also some enemy fire coming in. Pte Ostby whom I ~~xxx now~~ recognize said to me "I can't take it" or words to that effect. Pte Umlah also said that to me, but I can't say who said it to me first.

"DGD".

I then went and reported to Cpl Silver and when I went back to the rear of the sec. the two men were missing. On getting back to our billet, after the attack, I was called into Coy H.Q. by Lieut Harris and on coming back to my quarters Pte Ostby was in the room.

Cross-examination by Defence.

Q. As his superior did you give any further command ~~or~~ try in anyway to persuade this man to go ahead?
A. No, I reported to Cpl Silver as we were waiting in the FUP and were not going forward at the time.

Question by Court.

Q. Why or for what purpose did you go forward to report to Cpl Silver?
A. I went up to tell Cpl Silver that thetwo men "Couldn't take it" or words to that effect.

R.P. 83 (b) has been complied with.
"DGD".

4th Witness for the Prosecution.

M.39012 Pte Guay, J.W. L.E.R. having been duly sworn states:-

I am M.39012 Pte Guay, J.W. Bren gunner "D" Coy H.Q. LER I was on guard duty from 1900 hrs until 2000 hrs 24 Jan 45. At approx 1930 hrs the boys moved up to the FUP for an attack. They laid our barrage down. I thought some of the German shells were landing and crouched

"DGD"

in my trench. Two men came running back. One who jumped in my slit trench whom I recognized as Pte Umlah by his voice when he spoke to me. He stayed a couple of minutes and then left.

Cross Examination by Defence.

Q. Where the two men, yousaw running, together?
A. About 20 yeards apart.

Question by Court.

Q. Could you recognize the other man.
A. No Sir.
Q. Where was Pte Umlah running?
A. Pte Umlah was the lead of the two runningmen.

R.P. 83 (b) complied with "DGD".

5th witness for the Prosecution.

F.56243 Pte Umlah, D.E. IER having been duly sworn states:-

I am F. 56243 Pte Umlah, D.E. 17 Pl D Coy L.E.R. On 24 Jan 45 we were warned to go into the attack at 1930 hrs. We were called into another room by Lieut Harris and hetold us what the attack was going to be like. He took myself and Pte Ostby out of 6 sec and put us into 5 sec with Cpl Silver, and then we moved up to the FUP. The barrage started coming down and I told L/Cpl Short that I couldn't carry on and I went back and got in the slit trench behind and stood there behind the Bren gun.

"DGD".

A few minutes later Pte Ostby came back I got out of the slit trench and joined him and went to our usual "stand to" position. We stayed there until I saw one of the sections coming back and then went into the billet.

I recognize Pte Ostby.

Q. Was there any enemy shell or morter fire.
A. I am quite sure there was.
Q. When you came back and jumped into the slit trench did you recognize anyone init?
A. No I didn't they were crouched down.
Q. What was your usual "stand to" position?
A. It was in a trench close to the house.
Q. When you left the trench and went into the billet was the attack over?
A. Yes as all the boys were back.

No cross-examination by Defence.

Question by Court.

Q. Was there anyone else there when you spoke to Cpl Short and told him you couldn't go on?
A. I am not sure.

R.P. 83 (b) complied with "DGD"

"DGD".

1st Witness for the Defence.

Capt C.F. Egan L.E.R. having been duly sworn states:-

I am Capt C.F. Egan Medical Officer of the L.E.R. Approx 22 Jan 45 the accused reported to me on sick parade complaining of terrible nightmares and of being very nervous. I summoned his Cpl for objective evidence concerning the state of the accused. The Cpl stated that the accused every now and then raved in his sleep and had on one or more occassions been found in the process of loading fire-arms and immediate awakening action was taken. About that time the Regt received orders to move and it was understood that the accused would report to me at our arrival at a new position. This he did not do. Had he reported I would have had him sent in right away for a psychiatrists opinion. It would have been necessary to evacuate the man for this examination.

No Cross-examination by theProsecution.

Question by Court.

Q. What is wrong with the accused?
A. The accused has state of nervous instability, of a temporary or permanent nature. However his intelligence is such that he knows the difference between right & wrong.
Q. Is this the first time that the accused has been brought to medical attention?
A. I am not sure of it, but it is the first time it has been brought to my attention. I have been with the Regt since 1 Jan 1945.

"DGD".

Q. Would shell fire unhing the accused to such an extent that he could not carry out his duties?
A. Such is well within the realm of possibility, but cannot be stated positively without objective observation of his behaviour under such circumstances. That is why in all cases possible a Medical Officer values a description of behaviour from the soldier's superior officer.
Q. Is there any possibility of similating the symptoms and escaping detection by the unit M.O.?
A. Yes.

R.P. 83(b) has been complied with "DGD".

The accused takes the stand.

M.17258 Pte Ostby R.C. LER having been duly sworn states:-

I am M.17258 Pte Ostby R.C. 6 Sec 17 Pl "D" Coy LER On the evening of 24 Jan 1945 we were all called into our room by Lieut Harris who told us we were going into the attack. I started out with the section. We went out about 100 yds to the F.U.P. The shells startedfalling there were some enemy shells also. I lost my nerve so I spoke to L/Cpl Short and told him I couldn't take it and that if it stopped I would carry on and catch up with him. He didn't say anything but left and went up ahead to Cpl Silver who was 20 yds up ahead. I waited

"DGD".

a while, nothing happened, the shells were still falling, I thought everything was alright, seeing they didn't come back, so I went back and took up a position at the old "stand to" position. I stood guard there until they came back then I went into the house.

Cross Examination by Prosecutor.

Q. What do you mean when you say you thought everything was alright?
A. I meant that I thought since L/Cpl Short did not say anything that I could move back and get out of the shelling.
Q. Did you receive an order from any superior Officer to go to the rear
A. No.

Question by Court.

Q. Did you leave your section before they moved off to the attack or did you stay behind when they moved off.
A. I left when they moved forward.
Q. Why did you not report to the M.O. on reaching your new area on 22 Jan 45?
A. Because there were no sick parades taken down.
Q. Could you not report to your Pl or Coy Cadr and ask to be paraded to the M.O.
A. I did ask if there was a sick parade. Since we were so busy digging in I did not get the opportunity to ask to be paraded to the M.O.

"DGD"

Re-Examination by Prosecution through the Court.

Q. How many S.Bs men there in the Coy?
A. 2 Sir.
Q. Did any Coy Officer put an obstacle inthe way of you seeing the M.O. on the day or night of 23 Jan 1945 or the day of 24 Jan 45 prior to the attack?
A. The night of 22 Jan 45 we stood to all night so I had to get some sleep between the time we were digging. On 23 Jan 45 we stood to all night also. On 24 Jan 45 I was kept busy putting sandbags around the house.
Q. During this period did you have access to your Coy Officer through the normal channels?
A Yes.

R.P. 85(b) has been complied with. "DGD".

Prosecutor recalls Capt J. Harper Browse L.E.R.
R.P. 86(b)

On his former oath the witness states:-

Q. Was there a sick parade available on 22,23 or morning of 24Jan1945?
A. It was possible for any man to see a doctor who wanted to see a doctor, to the best of my knowledge. Some men, during that period did go sick and were sent out to the M.O. from 17 Pl.

Defence declines to cross-examine this witness.

R.P. 85 (b) has been complied with. "DGD".

"DGD".

Closing address - Defence

From the evidence given it is clear that this man has been serving in action when it was known that he was in an abnormal nervous condition, as pointed out by the Medical Officer. It seems highly unjust to charge a man for an Offence when he should not even be in action.

Witness No. 3 was the only superior rank at hand at the time of the alleged offence. This man reported to him "I can't take it" or words to that effect, and receiving no answer or no further word of command, he took it that the matter would be understood if he returned to his billet and took up his stand to position; which he did. Thus he actually stayed and took some part in the attack, even though it might have been guarding the rear, at the same time, showing he was not aware of being A.W.L. from his platoon as he had reported his departure. It should have been the job of the I/Cpl at this point to make a decision and give an order, men don't work automatically.

I maintain that this man is not guilty of the charges laid, rather that he has carried on in adverse conditions under much strain.

" R J Harmer Lt."

"DOD".

CLOSING ADDRESS / PROSECUTOR Page XII

In the case of: M. 17258 Pte Ostby B.C.

In view of the evidence brought out, I would like to accentuate five points to the Court:

1. The accused was in a F.U.P. waiting to attack a known enemy position.
2. The accused had been warned of this.
3. Enemy mortar fire was landing in the area.
4. The accused then made the statement, "I can't take it," to the 2 i/c of his section, and went to the rear.
5. He did not take part in the attack.

In light of this, I submit to the Court that a prima facie Case of misbehaving before the enemy in such a manner as to show cowardice has been established.

"T.N. Adamson Lieut".

"DOD".

Plea for mitigation of sentence in the case of M.17258 Pte Barney Christopher Ostby of the Loyal Edmonton Regiment.

Pte Ostby enlisted on 25 Apr 40 and proceeded overseas in Aug of the same year. He joined the Loyal Edmonton Regiment in Italy in Aug 43. Though he has spent some time in Hospital with jaundice, he still has seen much action in the toe of Italy and in the last three or four months up here.

This man has previously complained to the regimental M.O. of his nerves and on 22 Jan 45, the day the unit moved from reserve to this area, he visited the M.O. and was given to believe that his case was one for a specialist. However, in the bustle of the move, he let it ride, intending to carry on and do his best until further opportunity for a check up presented itself.

Unluckily, before this opportunity came, he found himself involved in an attack with D Coy. Again he resolved to do his best, but under the shell fire, he found it impossible to go on.

He informed the L/Cpl of his section of the fact and received no further command forward, so returned to his guard position.

This man is married with one child, wife and child living in England, these people will be bearing the brunt of the punishment.

Therefore in view of the above facts, I ask the court for leniency in this man's case.

"DGS"

Ex A "DGD"

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).
H.17258	Private	Ostby, R.C.	The Loyal Edmonton Regt.

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 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 AA 15 (1) ..... Four ..... times.

For AA 40 ..... One ..... times.

For .... times.

For .... times.

Date of first entry in Field Conduct Sheet ..... 18 Apr 41 .....

Date of last entry in Field Conduct Sheet ..... 28 Apr 43 .....

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

*Strike out if not applicable.

"ELB" *3. ~~The accused at the present time is under sentence for~~ X ..... beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 3 days in military custody, i.e., nil days in open arrest, 3 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 25

"ELB" 6. The date of his ~~attestation calling up for military service~~ is 25 Apr 40

7. The service which the accused is allowed to reckon is 4½ yrs

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

"ELB" 8. ~~The accused is in possession of †~~

9. "ELB" ~~(If the accused is a warrant officer or N.C.O.) The accused has served continously, without reduction, to the present date—~~

	Date of Promotion.
~~In the substantive rank of~~	
"ELB" ~~In the war substantive rank of~~ Ex A	
~~In the acting rank of~~ "DGD"	

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

Wt. 13479/2857 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.
		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 Twenty seventh day of January 1945

"E.L. Boyd (E.L. Boyd) Captain
& Adjutant The Loyal Edmonton Regiment

LRPG V LRIZ SR 7(85)

FROM: CANMILITRY 081625A

TO: CDN O2E CMF

A 2795 (.) RESTRICTED (.) PARA ONE . FGCM POR/PROCEEDINGS E4652 PTE SARAH JP SERIAL 289B/1 ENDORSED BY MGA 6 MAR 45 QUOTE I CONFIRM THE FINDING AND SENTENCE AND I DIRECT THAT A PART OF THE SENTENCE NOT EXCEEDING TWO YEARS SHALL BE SERVED IN A MILITARY PRISON UNQUOTE (.) PARA TWO . FGCM PROCEEDINGS M17258 PTE OSTBY BC SERIAL 38/1 ENDORSED BY MGA 7 MAR 45 QUOTE I CONFIRM THE FINDINGS AND SENTENCE AND I DIRECT THAT A PART OF THE SENTENCE NOT EXCEEDING TWO YEARS SHALL BE SERVED IN A MILITARY PRISON UNQUOTE (.) MGA DIRECTS THAT EVIDENCE OF M O AND PSYCHIATRIC REPORT BE GIVEN FULL CONSIDERATION ON REVIEW

MT 090921 JN AR B C B S R Q FOR CK PSE ON THESE

RD SRL 85 090922 SG Q

2 CIB/5-4-1
31 Jan 45.

FGCM
M.17258 Pte Ostby, B.C.
L.S.R.

1. The President of the Court considers that the evidence indicates that the mental condition of the accused may be such that he is not entirely responsible for his actions, and that he should appear before a Medical Board before his sentence is confirmed.

2. It is recommended that arrangements be made for him to appear before such a board.

"M. P. Bogert"
(M.P. Bogert) Brig
Comd 2 Cdn Inf Bde.

It is the opinion of the court that the accused M.17258 Pte Ostby B.C. should have a medical examination before confirmation of sentence.

27 Jan 45

"D.C. Duncan Maj"
President FGCM.

MFM 6
(AFB 132)
40/P&S/136 (3488)

No. 17258 Name OSTBY Christopher Barney | Sqn, Battery or Company: D | Corps: CIC | Date of enlistment: 25 Apr 40 | 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 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
Witley	18 Apr 41	Pte		Absent from defaulters parade	Cpl Evans	3 days D.F.	19 Apr 41	LtCol Redman	
Witley	26 Sep41	Pte		Conduct to the prej insubordinate language to an NCO	Sgt Davies Sgt Johnston	5 days detention	26 Sep41	Lt Col Redman	
Field	12 Sep 42	Pte		AA 15(1) AWL from 2359 hrs 12 Sep 42 to 1700 hrs 13 Sep 42 Total absence 17 hrs.	Cpl Flynn, J.	3 days D.F.	14 Sep42	Lt-Col G. Kitching	1 days auto forf.
Field	27 Sep42	Pte		AA15(1) AWL from 1300 hrs 27 Sep 42 to 1845 hrs 27 Sep 42 whilst his coy were on Stand to	Cpl Warring	10 days F.F. 10 days pay	6Oct 42	Lt-Col G. Kitching. Ex B. "DOD"	

(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 Apr 43	Pte		AA15(1) AWL from 2359 hrs 29 Apr 43 until 1600 hrs 30 Apr 43 Absent 16 hrs 1 min	L/Cpl Westman Sgt McEwen	14 days F.P. 14 days pay	1May43	Lt Col J.C. Jefferson	1 days auto forf.

Certified true copy.

"E. L. Boyd"
(E.L. Boyd) Capt & Adjutant
The Loyal Edmonton Regiment.

Ex. "B"
"DGD".

5 V — 6

Pte. O'Sullivan, D. P.

RECORDED AT CMHQ IN AB 160

FIELD GENERAL COURT-MARTIAL

CF A96 (In lieu of AFAM 40/P & D/1688 (R144))
4/38B

Convened by Order of Brigadier J.A. Roberts (Offr Comd) Comd 8 Can Inf Bde dated 28 Oct 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-13050	Pte		Denis Patrick	O'SULLIVAN	N Shore R

PROCEEDINGS REVIEWED 12 Nov 45 [illegible] Capt. REVIEWING OFFR, 1 CAN BRANCH, ARMY

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 29 Oct 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 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 1.415 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 ~~[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 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	B. Hunbelman	8 CIB RCE
Member	Capt	J. M. Lavallee	R de Chaud
Member	Lt	G. Dodaken	R de Chaud
Judge-Advocate			
Prosecutor	Capt	J.P. McKenna	N Shore R
Defending Offr	Capt	D.F. Long	N Shore 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 Revs 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 33.)

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

(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 A8 nook 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 C

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

AB 160 CF F90

SCHEDULE.

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

Accused: G 13050 Pte O'Sullivan D P

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 8 (2)	Not Guilty	Not Guilty	
2nd AA 24 & 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 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) ~~[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 10 days, of which N/K 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) ~~[illegible]~~ Judge-Advocate, if any. 29 Oct 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 ~~[illegible]~~ (Sgd) ~~[illegible]~~ Commanding ~~[illegible]~~

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 orders.~~(1)

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

(Sgd) Jack Roberts Brig

Date 1 Nov 45 Commanding 8 Can Inf Bde (Can) 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.

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) BL BL

(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) BL

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 the 2nd 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.~~ BL BL

(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) BL

(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 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) BL

(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 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 FIRST Charge 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) BL BL

(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 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) BL BL BL

(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 Sir (2) BL

(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.

34

NORTH SHORE (NEW BRUNSWICK) REGIMENT CDA

29 OCT 45

G/130151 PTE O'SULLIVAN, D P

This is to certify that I have examined the a/m soldier and find him fit to be tried by F.G.C.M.

.....MO

C H A R G E S H E E T

The accused, G/13050 Private Denis Patrick O'SULLIVAN, "C" Coy, North Shore (New Brunswick) Regiment CDA, a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE
AA SEC 8 (2)

WHILE ON ACTIVE SERVICE

OFFERING VIOLENCE TO A SUPERIOR OFFICER

in that he

fired a pistol in the direction of G.22212 CQMS (A/CSM) PAYNE, A J and G.23299 CPL (A/SGT) MacDOUGALL, M J and threatened to prevent them from leaving as they were removing a woman from G.13050 Pte. O'SULLIVAN, D P's room at approx 2315 hrs 19 Oct 45.

SECOND CHARGE
AA SEC 40

WHILE ON ACTIVE SERVICE

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at DRIEBERGEN, HOLLAND at approx 2300 hrs 19 Oct 45 had a civilian woman in his barracks.

O L Corbett Maj

(O L Corbett) Maj.
A/CO North Shore (NB) Regiment CDA.

In The Field.
21 Oct 1945.

To be tried by Field General Court Martial.

J A Roberts

(J. A. Roberts) Brigadier
Comd 8 Cdn Inf Bde (Cda)

28 Oct 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) 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-13050	Pte		Denis Patrick	O'SULLIVAN	N Shore R

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) 28 Oct 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.)
Maj	B. Dunkelman	QOR of C

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	J.M. Lavallee	R de Chaud
Lt	G. Radskir	R de Chaud

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	M. A. Petersen	QOR of C

JUDGE-ADVOCATE.

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

On Active Service in the Fd

in Holland
(Country.)

Dat 28 Oct 45

Jas A Roberts
(Signed personally. RP 105 fn 2.)

Brigadier
(Rank.)

Commanding 8 Cdn Inf Bde (Cdn).
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CPA 95 (In lieu of APA 3) 40/F & S/1697 (6148)

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

32. Opening address Prosecution

On the first charge A.R. Sec (8)2. It cannot be proved that the accused actually fired a shot in the direction of the Witnesses (C.S.M. Cayse A.S. & Sgt. MacDougall). with intent to harm them but as it will be brought out that the accused was the only man who could have fired a shot as he was the only person that ~~he was in possession of the~~

J.R. Mckenna Capt.

32

29

First witness for the prosecution:-

C.Q.M.S (A/S/M)(Sgt)

G-22212 ~~Sgt (A/S/M)~~ Payne, A.J. North (R) Shore (N.B) Regiment, sworn, states:-

I am G-22212 CSM. Charlie Coy, recognise the accused here in Court. On the 19 October 1940 at approximately 2300 hrs accompanied by Sgt MacDougall, I was inspecting the billets, on coming to Pte O'Sullivan's billet, we proceeded to check the attic where he lives, we found Pte O Sullivan in bed with a woman. We ordered the woman out. She started to get dress and then left the room. Sgt MacDougall was standing just outside the door at this time. Pte O'Sullivan said that we were dirty to do this to him, and then said that he would not let either one of us go down the stairs. As he left a shot was fired. The O Sullivan was alone on the attic floor with the exception of Sgt MacDougall the woman

and myself, when I inspected it.

Cross-examination:-

Ques: Did you see the accused fire the shot?

Ans: No, sir.

Ques:- Where were you when you heard the shot?

Ans:- We were just leaving about five feet away from the door.

Ques:- Did you check the first room on the right as you entered on the top floor?

Ans:- No the place was locked, full of books that belong to civil cases.

Ques:- Was this room securely locked?

Ans:- The room was shut and look on the first day we enter the building, and I never saw it opened after that.

Cross by Court:-

Ques:- Where did the shot come from?

Ans:- The shot came from behind us

Ques:- Who do you think fire the shot?

Ans:- Pte O'Sullivan.

Ques:- Why do you think Pte O'Sullivan fire the shot?

Ans:- Because he was the only man on the floor.

Ques:- You say the shot came from behind you. Exactly where did it come from behind you?

Ans:- On a line from the top of the stairs to the door of his room. Approximately seven feet from the door of the accused room.

Ques:- In your opinion was the shot fire at you?

Ans:- No sir, just to ~~frighten~~ (4.8) frightens me.

Ques:- Did you see the bullet land?

Ans:- No.

Ques:- Did you hear the bullet land?

Ans:- No.

B2

Defence Summary

The Defence Submits that the Prosecution has no case, the prosecutor in his opening address admitting there was no proof of O'Sullivan having fired the Pistol.

There is also lack of evidence to establish possession of the pistol by the accused.

I ask that this 1st charge be dropped as there is no Prima Facie case established.

D.Y. Darg. Capt

Plea of Mitigation - Pte O'Sullivan, B.H. G.3050

The accused is a comparatively young soldier having joined the army at the age of 21. He has been in the army for 5½ years and has spent three years of this time in Newfoundland and 1½ years overseas. He had been four months in continuous action, until evacuated, on the European front, most of this time as a Stretcher bearer. His record has been good.

O'Sullivan holds a responsible position in civilian life, that of Physical Education instructor in the Catholic Youth Organization, which I believe is being held for him on his return to Canada, and which I believe is an important job to the community where he lives.

W. G. Doig - Capt

64 A

SUMMARY OF EVIDENCE IN THE CASE OF G/I3050 PRIVATE DENIS PATRICK O'SULLIVAN, NORTH SHORE (NEW BRUNSWICK) REGIMENT CDA, A SOLDIER OF THE CANADIAN ARMY PLACED ON ACTIVE SERVICE.

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

FIRST WITNESS G/22212 SGT (A/CSM) PAYNE, A J, North Shore (NB) Regiment having been duly sworn states:

"At approximately 2315 Hrs the 19th Oct 45 while checking the billets with Sgt MacDougall, I entered Pte O'Sullivan's room and found him in bed with a woman. We had checked the other rooms and found nobody in them. I ordered the woman to get dressed and get out. The woman left the room and started down the stairs, Pte O'Sullivan said that he should not let either Sgt MacDougall or myself go down, then fired a shot and said "This is not a threat, and that goes for you too Mac" I then called the Regimental Police and placed him under close arrest. We searched from where Pte O'Sullivan had fired and found the lead and casing of the bullet beside a stone pillar. We then went into his room where I found the weapon in a hole in the figure of a lion"

A J Payne

(G/22212 Sgt (A/CSM) PAYNE, A J)
North Shore (NB) Regiment Cda.

Q. I. Did you see me fire the shot?

A. I. No my back was towards you.

Q. 2. Where were you when you heard the shot?

A. 2. At the top of the stairs.

SECOND WITNESS G/23299 SGT MacDOUGALL, M J, North Shore (NB) Regiment having been duly sworn, states:

"At approximately 2315 Hrs the 19th Oct 45, I accompanied CSM Payne on his tour of inspection of the billets. The top floor was vacant with the exception of one room in which Pte O'Sullivan was in bed with a woman. CSM Payne told her to get dressed and get out. While the girl was leaving, the accused said "I should not let you go down the stairs" The girl was part way down and we were at the top when the shot was fired. After he fired the shot, Pte O'Sullivan said "This is no threat" We then called the Regimental Police and placed him under close arrest. After Pte O'Sullivan had been taken away, we went up and searched his room and CSM Payne found the pistol.

M J McDougall

(G/23299 M J MacDougall) Sgt.
North Shore (NB) Regiment Cda.

Q. I. Did you see me fire the shot?

A. I. No.

Q. 2. At what time did CSM Payne find the pistol?

A. 2. About 0015 Hrs, 20 Oct 45.

Q. 3. Did you search all the rooms?

A. 3. We did.

THIRD WITNESS K/45892 SGT SAVOIE, L, North Shore (NB) Regiment having been duly sworn, states:

" "The afternoon of 19 Oct 45 the company went on a route march. When we stopped for a break, I saw Pte O'Sullivan take a pistol out of his pocket.

The accused declines to cross-examine.

L Savoie

(K/45892 L Savoie) Sgt.
North Shore (NB) Regiment Cda.

QUESTIONS TO THE ACCUSED

Q . I. 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.

A. I. 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 In The Field this 21st day of Oct 45.

M. B. Bushnell Capt

(M Bushnell) Capt.
North Shore (NB) Regiment Cda.

Ex (B.) AP 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).
G/13050	PTE	O'SULLIVAN, D P	NORTH SHORE (NB) REGIMENT CDA

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 AA SEC 40 — 2 times.

For _____ times.

For _____ times.

For _____ times.

Date of first entry in Field Conduct Sheet 11 May 45

Date of last entry in Field Conduct Sheet 15 Sep 45

~~[illegible]~~ EGW

*~~[illegible]~~ EGW

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for ~~[illegible]~~ EGW ~~[illegible]~~ for 10 days in military custody, *i.e.*, ~~[illegible]~~, _____ days in close arrest; ~~[illegible]~~ EGW

5. The present age of the accused is 26 Yrs 7 Mos

6. The date of his attestation is 16 May 40 ~~[illegible]~~ EGW

7. The service which the accused is allowed to reckon is 5 Yrs 5 Mos

~~[illegible]~~ EGW

~~[illegible]~~ EGW

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

		Date of Promotion.
In the substantive rank of	N/A	N/A
In the war substantive rank of	N/A	N/A
In the acting rank of	N/A	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 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.
		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 21st day of October 1945

(O L Corbett) Maj.
A/CO North Shore (NB) Regiment CDA.

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).
G/13050	PTE	O'SULLIVAN, D P	NORTH SHORE (NB) REGIMENT DBA

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 AA SEC 40	2 times.
For	times.
For	times.
For	times.

Date of first entry in Field Conduct Sheet 11 May 45

Date of last entry in Field Conduct Sheet 15 Sep 45

[redacted]

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for [redacted] days in military custody, *i.e.*, [redacted] days in close arrest; [redacted]

5. The present age of the accused is 26 Yrs 7 Mos

6. The date of his [redacted] attestation is 16 May 40

7. The service which the accused is allowed to reckon is 5 Yrs 5 Mos

8. [redacted]

9. [redacted]

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

		Date of Promotion.
In the substantive rank of	N/A	N/A
In the war substantive rank of	N/A	N/A
In the acting rank of	N/A	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 55960/1602 20,000 3/44 51-4761. Forms/B.296/War/2

No. G13050 Name O'SULLIVAN, DP Sqn, Battery, or Company Ex (C) Corps CIC Bt

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 Date of enlistment 16 May 40 Badges Signature OC Company, etc Service or Proficiency Pay N/A 3/17 MFM 6 (AFB 122) 40/P&S/136 (5413) 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	11/5 45	Pte		AA SEC 40 WOAS: Conduct to the Prejudice of Good Order and Military Discipline, in that he in the City of Ghent, Belgium on the evening of 11 May 45 was involved in a disturbance resulting in his receiving a severe laceration of the Lt hand with cut extensor tendons	DOCUMENTARY EVIDENCE	1 Day's F P 28 Days' Pay	29-8/45	Lt.-Col LJ Flynn	Forf 1 Day's Pay FR&I 149 (1)(b) Forf 28 Days' Pay FR&I 149 (2)
FIELD	15/9 45	Pte		AA SEC 40 WOAS: Conduct to the Prejudice of Good Order and Military Discipline, in that he was still in bed at 1100 hrs 15 Sep 45 when warned to be on parade at 0800 hrs.	SGT M J	7 DAYS' CB	17-9-45	Major WK Dickie	

(PTO)

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 21st day of October 1945

(O L Cerbett) Maj.
A/CO North Shore (NB) Regiment CDA.

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
				E. A. White Capt & Adjt					
				CERTIFIED TRUE COPY					
				21 Oct 45					

MINUTE OF PROMULGATION

FGCM

G.13050 Pte Denis Patrick O'SULLIVAN, N Shore R

CHARGES: FIRST CHARGE AA SEC 8(2)

WHILE ON ACTIVE SERVICE OFFERING VIOLENCE TO A SUPERIOR OFFICER
in that he
fired a pistol in the direction of G.22212 CQMS (A/CSM) PAYNE, A J and G.23299 Cpl (A/Sgt) MacDOUGALL, M J and threatened to prevent them from leaving as they were removing a woman from G.13050 Pte O'SULLIVAN, D.P's room at approx 2315 hrs 19 Oct 45.

SECOND CHARGE AA SEC 40

WHILE ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE
in that he
at DRIEBERGEN, HOLLAND at approx 2300 hrs 19 Oct 45 had a civilian woman in his barracks.

DATE(S) OF TRIAL: 29 Oct 45

FINDINGS: FIRST CHARGE: Not guilty
SECOND CHARGE: Guilty

SENTENCE: To undergo 28 days detention.

DATE OF SENTENCE: 29 Oct 45

CONFIRMATION:

Confirmed

DATE OF CONFIRMATION:

1 Nov 45

J. C. A. Roberts Brig
Comd 8 Cdn Inf Bde (Cdn)
(CONFIRMING OFFICER)

TIME IN CONFINEMENT AWAITING TRIAL - 10 days of which nil days were spent in hospital.

PROMULGATED AND EXTRACTS TAKEN

Accused	Date	Signature of Officer
G13050 Pte D.P. O'Sullivan	2 Nov 45	J. Gordon Lt Col

W-45.

Rfn O'SULLIVAN, J.F.

7

29

H-40983 Rfn.O'SULLIVAN, John Franklin
R. Wpg. Rif.
3 C.D.I.R.U.

W-45

Army Form A.3.

Correspondence to be PINNED here.

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

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this thirty-first day of December, 1942.

Whereas it appears to me, the undersigned, an officer in Command of "D" 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.

*Omit if not applicable.

*~~[I am unable to appoint~~ :—

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

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

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

Proceedings Reviewed
J. A. Campbell Lt. Col.
for Reviewing Officer (J.A.G.C.M.H.Q.)
5 Feb 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.
Lieut.Colonel	D.L.Redman	Calg. Highrs.

Members.

Rank.	Name.	Regiment.
A Captain	from	1 Cdn.Base Staging Camp
A Lieutenant	from	3 Cdn.Gen.Pioneer Coy.
A Lieutenant	WAITING MEMBER from	3 C.D.I.R.U.

*Signed G. Kelley Basher Colonel

Commanding "D" Group, Cdn.Reinf.Units

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*)
H-40983 Private O'Sullivan, John Franklin R. Wpg. Rif. 3 C.D.I.R.U.	First Charge A.A.Sec.15(1)	Guilty	Guilty	I confirm the findings and sentences of the Court. G. Harvey Baker Col
	Second Charge A.A.Sec.22	Guilty	Guilty	
	Third Charge A.A.Sec.15(1)	Guilty	Guilty Sentenced to undergo detention for a period of One Hundred and Eighty (180) days and to be put under stoppages of pay to make good the sum of seventeen dollars and five cents and is ordered to pay the costs of this prosecution See Charge Sheet attached	

2 Jan 1943

* Question to be asked of accused, if he pleads not guilty (R. of P. 30 (1)):—
"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. Harvey Baker Colonel (Signed) [illegible]

Commanding "D" Gp., C.R.U.
Convening Officer (c) *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 2nd. day of January 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)

were duly sworn.

* Omit if not applicable.

Signed this 2nd day of January 1943

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 orders.)

Signed this 3rd day of Jan 1943

G. Harvey Baker Colonel
Confirming Officer.

Promulgated and extracts taken in the case of

(*a*) (Dated) 4 January 1943 (Signed) J.A. McIntosh

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.C. 47747/1937 25 M. 5/40 K.B./5265(2) Gp. 606/3

CHARGE SHEET

The accused, Regimental number M-40983, Rifleman JOHN FRANKLIN O'SULLIVAN, The Royal Winnipeg Rifles, reinforcement on the strength of the 3rd Canadian Division Infantry Reinforcement Unit, a soldier in the Canadian Army (Overseas) is charged with:

When on Active Service, absenting himself without leave

in that he

FIRST CHARGE
A A 15 (1)

in the Field did absent himself without leave from 0800 hours the 11th day of November 1942, until he surrendered himself at the 3rd Canadian Division Infantry Reinforcement Unit Guard Room at 2230 hours the 1st day of December 1942. Total time absent 20 days, 14 hours, 30 minutes.

When on A ctive Service, escaping from lawful custody

in that he

SECOND CHARGE
A A 22

at about 1945 hours the 5th day of December 1942, when proceeding under escort, did break away from his escort and escape.

When on A ctive Service, absenting himself without leave

in that he

THIRD CHARGE
A A 15 (1)

in the Field did absent himself without leave from 1945 hours the 5th day of December 1942 until apprehended by Military Police in Brighton at 1300 hours the 26th day of December 1942. Total time absent 20 days, 17 hours, 15 minutes, thereby incurring expences to the amount of seventeen shillings and five pence, cost of return to Unit.

J. A. McIntosh Colonel
(J.A. McINTOSH)
Commanding Officer,
3rd Cdn. Div. Inf. Reinf. Unit.

Dated in the Field this
29th day of December 1942.

To be tried by Field General Court Martial

G. Hartley Basher
(G. Hartley Basher) Colonel
Commander
"D" Group, Cdn. Reinf. Units

In the Field
31 Dec. 42

3, CAN. DIV. INF. REINF. UNIT

2 Jan 43

TO WHOM IT MAY CONCERN:-

This is to certify that I, the undersigned Medical Officer for 3, C. D. I. R. U., have medically examined the U/M, and find him fit to stand trial by Courts Martial.

H-40983 Rfn. O'Sullivan, F. J.

M. A. Clicho Dr. Capt.
Medical Officer
3, C. D. I. R. U.

PROCEEDINGS OF A FIELD GENERAL COURT-MARTIAL
HELD AT SALAMANCA BARRA CKS ALDERSHOT
ON THE 2nd. DAY OF JANUARY 1943

The accused H 40983 Rfn. SULLIVAN J.F. ..... Unit R.W.R. 3 C.D.I.R.U.

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

The accused is brought before the Court
The Medical Certificate is laid before the Court, signed by the President and attached to the proceedings.
The order convening the Court is read by the President and the accused having no objection to the President or any member of the Court, the Court is duly sworn.

The following constitute the Court:

President LT.-COL. D.L. REDMAN, V.D. ..... Unit CALG. HIGHRS. 1Cdn. Base Staging Camp

Members CAPT. H.M. POTTICARY ..... Unit

LIEUT. A.J. DAVIS ..... Unit 3 Cdn. Gen. Pioneer Coy.

Capt. S.H. Pickard R.C.R. Lieut. W.O. Wareham S.D.F.G.
The officers under instruction are duly sworn Lieut. H.E. Kent. 1CMGRU.
Lieut. R.B. Croydon. 1CMGRU. Lieut. E.A. MacNeil. S.D.F.G.

Prosecutor Capt. W.G. White ..... Unit C.Scot.R. 3CDIRU

Defending Officer Lieut. O.R. Donagh ... Unit R.W.R. 3C.D.I.R.U.

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

Pursuant to R.P.37 THE ACCUSED

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

The Court is closed to consider the sentence.

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

(The accused declined to make any statement in mitigation of punishment, and the Defending Officer stated he had nothing to add to the evidence of the character witness (attached hereto))

[signature] Lt Col

(To be signed by the President and attached to A.F.A.3

(over)

1ST Witness as to character: 11 41 089 Cpl. Rosier J RWR
3 CDTRO, having been duly sworn, is examined by
the Defending Officer:
Q. Do you know the accused? A. Yes sir I have known this
accused since June 1980. I walk the times I have known him
he has been honest and trust worthy man & think anyones who
knows him will back me up on this. MM

SUMMARY OF EVIDENCE

in the case of

Regimental Number H-40983 Rifleman JOHN FRANKLIN O'SULLIVAN, Royal Winnipeg Rifles, reinforcement on the strength of the 3rd Canadian Division Infantry Reinforcement Unit, a soldier in the Canadian Army (Overseas)

The evidence is taken under oath by direction of the Officer Commanding.

FIRST WITNESS
Prosecution

Regimental number H-40713, Cpl. COOKE R.A., Royal Winnipeg Rifles, reinforcement on the strength of the 3rd Canadian Division Infantry Reinforcement Unit, having been duly sworn, states:

"On the 11th day of November 1942 I was Company Orderly Sergeant, and called the roll at 0800 hours, when the accused, whom I recognize, failed to answer his name. I therefore reported him absent. He remained absent from roll calls until he surrendered himself at 2230 hours the 1st day of December 1942."

The evidence is read to the witness.

The accused declined to cross examine the witness.

SECOND WITNESS
Prosecution

Regimental number F-40807 Cpl. CHUTE G.W., Highland Light Infantry, reinforcement on the strength of the 3rd Canadian Division Infantry Reinforcement Unit, having been duly sworn, states:

"On the 1st day of December 1942, whilst I was on duty at the desk at 3rd Canadian Division Infantry Reinforcement Unit guard room, the accused, whom I recognize, surrendered himself to me at the guard room at 2230 hours."

The evidence is read to the witness.

The accused declined to cross examine the witness.

"On the 5th day of December 1942 while I was on duty at the guard room, regimental number H-40983 Rfn. O'SULLIVAN J.F., who was held in custody at the guard room, informed me that he had to go to the toilet. I detailed L/Cpl. CARDOW J. to act as his escort. They left the guard room about 1930 hours, the toilet is outside. At 1945 hours L/Cpl. CARDOW J., returned to the guard room, reporting to me that Rfn. O'SULLIVAN J.F., had escaped from him."

The evidence is read to the witness.

The accused declined to cross examine the witness.

THIRD WITNESS
Prosecution

Regimental number C-31051 Lance Corporal CARDOW J., Stormont, Dundas & Glengarry Highlanders, P.W. "A" Wing, reinforcement on the strength of the 3rd Canadian Division Infantry Reinforcement Unit, having been duly sworn, states:

"While I was on duty at the guard room on the 5th day of December 1942, Cpl. CHUTE G.W., detailed me to take Rfn. O'SULLIVAN J.F., to the toilet. I did so, and on the way back Rfn. O'SULLIVAN J.F., escaped from me. I could not catch him and I reported back to Cpl. CHUTE G.W., at 1945 hours saying that Rfn. O'SULLIVAN J.F., had escaped from me." On the 28th day of December while I was on duty at the guard room Rfn. O'SULLIVAN J.F., was brought to the guard room by a L/Cpl from the Canadian Provost Corps at 1240 hours and held in custody."

The evidence is read to the witness.

The accused declined to cross examine the witness.

FOURTH WITNESS
Prosecution

Regimental number H-40501 Sgt. MOODY W.G., Royal Winnipeg Rifles, reinforcement on the strength of the 3rd Canadian Division Infantry Reinforcement Unit, having been duly sworn, states:

" On the 5th day of December 1942 I was Company Orderly Sergeant. At approximately 2000 hours I received the information from the Regimental Provost that the accused Rfn. O'SULLIVAN J.F., had escaped from escort and gone absent without leave. I placed his name on the tattoo report of that date. I took over my tour of duty as Company Orderly Sergeant on the 28th day of December 1942 and on that date we received a statement from the Provost Corp that Rfn. O'SULLIVAN J.F., had been apprehended. I checked the tattoo reports back to the 5th day of December 1942, and found that Rfn. O'SULLIVAN J.F., marked absent on all of them."

The evidence is read to the witness.

The accused declined to cross examine the witness.

FIFTH WITNESS
Prosecution
Documentary

Corporal MILLS, Brighton & Hove Military Police, states:

"Sir,

At Brighton on the 26th day of December 1942 at about 1300 hours I was on duty in Buckingham Street where I saw the above named soldier (Rfn.O'SULLIVAN J.F.) I ordered him to produce his pass, this he was unable to do. He was absent. I arrested him and conducted him to Brighton Police Station where he was detained awaiting escort."

The accused does not require the attendance of Cpl.MILLS for the purpose of cross examination.

SIXTH WITNESS
Prosecution
Documentary

Lance Corporal GOODWIN, Brighton & Hove Military Police states:

"Sir,

I have read over and corroborate the statement of Corporal MILLS of the Brighton & Hove Military Police."

The accused does not require the attendance of L/Cpl. GOODWIN for the purpose of cross examination.

SEVENTH WITNESS
Prosecution
Documentary

Regimental number F-40807 Cpl. CHUTE G.W. Provost, states: "Regimental number H-40983 Rfn. O'SULLIVAN J.F., Royal Winnipeg Rifles, No. 1 Coy, 3rd Cdn. Div. Inf. Reinf. Unit, returned to 3rd Cdn. Div. Inf. Reinf. Unit guard room at 1240 hours the 28th day of December 1942 under escort the Canadian Provost Corps,"

The accused, having been duly warned in accordance with Rule of Procedure 4 (2), reserves his defence.

Taken down in the hearing and presence of the accused.

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

Adjutant - 7th Brigade Wing,
3rd Can. Div. Inf. Reinf. Unit,

Dated at Salamanca Barracks,
Aldershot, Hants., England,
this 29th day of December 1942.

Certificate in accordance with Army Act, Section 163 (1) (ii).

I certify that No. H40983 Rank RFN Name O'SULLIVAN F J

Unit No 1 C.D.I.R.U., R.W.R. was arrested at Buckingham ST. Brighton

at about 1300 hrs 26/12/42 and that at the time of his arrest he was

wearing military uniform.

Signature of Provost Marshal, A.P.M., or other officer into whose custody the above-named person was taken into arrest.

D. A. P. M. BRITISH 27 DEC 1942 CDN. CORPS

Mallmall Major

NOTIFICATION OF RETURN OF ABSENTEE OR DESERTER
3 CANADIAN DIVISIONAL INFANTRY REINFORCEMENT UNIT

REG.NO. H40983 NAME Rfn. O'Sullivan F.J.

UNIT R.W.R. Cay. DATE 28 Dec 42

DATE APPREHENDED OR ~~SURRENDERED~~ 1300 Hrs 26 Dec 42

PLACE APPREHENDED OR ~~SURRENDERED~~ Brighton

DATE OF GOING A.W.L. 1945 Hrs 25 Dec 42

Returned to 3 C.D.I.R.U. Guard Room by Can. Provost at 1240 Hrs 28 Dec 42

Commanding Officer - 3 C.D.I.R.U.

G.W. Chute
F40807 Cpl.
Provost

CHARGE

Army Form B 252
(See King's Regulations)

Royal Winnipeg Rifles — Regiment

NO 1 C.D.I.R.U. — Battery / Squadron / Troop or Company

CHARGE against No. H 40983 Rank Rfn.

Name F.J.O'Sullivan.

Place ? Date of Offence ?

OFFENCE W.O.A.S. was absent from ? until apprehended by the Military Police in Buckingham Street at about 1300 hrs on the 26th Dec 1942.

D. A. P. M. BRITISH 17 24 DEC 1942 GEN. CORPS

Names of Witnesses :—

Cpl Hills. Brighton & Hove Military Police.
L/Cpl Goodwin. Brighton & Hove Military Police.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

30133. Wt.W/2472/969. 2,000,000. 5/42. K. & H., Ltd. G662/42.

P.T.O.

Statement of **EVIDENCE** in the case of

NO H 40893 Rfn F.J.O'Sullivan.
Royal Winnipeg Rifles.
NO 1 C.D.I.R.U.

Sir,

At Brighton on the 26th December 1942 at about 1300 hrs I was on duty in Buckingham Street where I saw the above named soldier.

I ordered him to produce his leave pass this he was unable to do. He was absent.

I arrested him and conducted him to Brighton Police Station where he was detained awaiting escort.

S Hills Cpl.
Brighton & Hove Police Station.

REMARKS

Sir,

I have read over and corroborate the above statement.

W D Goodwin L/Cpl.
Brighton & Hove Military Police.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No H/40983 Rank Rfmn. Name O'Sullivan, F.J. Unit 1 C.D.I.R.U.

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

Date	Particulars	Amount £	s	d
28 Dec 41	Escorts return fare from LONDON To Brighton		7	11
	Prisoners single fare to LONDON From Brighton		4	0
	Prisoners fare from To			
	Escorts & Prisoners expenses for ~~Bed~~, Meals, Bus fares		5	6
	Total £		17	5

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

[signature] Lieut.

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

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

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number H-40983 *Rank* Rfn. *Name* O'SULLIVAN J.F. *Regiment (or as the case may be).* Royal Winnipeg Rifles, 3 C.D.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. 677, 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	A.A. 9 (2)	times	one	times.
For	A.A. 15(1)	two times	five	times.
For	A.A. 40	times	three	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 no days in civil custody, and three days in military custody, making a total of three days, of which no days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 22 years 8 months

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 22 Jun 1940.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2yrs 6mths 24 days

8. The accused is entitled to deferred pay or gratuity in respect of 2yrs6mths24days service.

9. The accused is entitled to reckon 2yrs6mths24days 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

(*16648) Wt.30248/862 75,000 12/40 A.& S.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. H-40983 Rank Rfn. Name O'SULLIVAN J.P. 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 29 day of December 1942.

[signature] Captain,
(W.G. WHITE) Adjutant,
7 Bde Wing, 3 C.D.I.R.U.

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 collected from such sources as are available and the paragraphs concerned amended accordingly.*)

STATEMENT BY THE ACCUSED

I sertify having received, free of charge, a copy of the Summary of Evidence, list of witnesses, list of exhibits, and charge sheet.

I desire the services of an Officer to represent me at my trial.

F. F. O'Sullivan

L40983 Rifleman O'SULLIVAN J.F.

M.F.M. 6

No. H-40983 Name O'SULLIVAN F. Sqn., Battery, or Company Corps R. WPG. RIF. Date of enlistment 22-6-40 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 21-9-40 No. and date of last drunk Nil 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
PREVIOUS SHEET DESTROYED AFTER SIX MONTHS SERVICE; 22-12-40 (W.Paulson) Lieut.									
Debert	30-12-40	Rfn		A.A.Sec 40 Conduct to the prejudice of good order Etc(carrying on a disturbance after lights out)	Cpl.Bestick L/Cpl.Kerr	14 days Det'n	31-12-40	Major Bingham	
Debert	12-2-41			A.A.Sec 40 An act prej. to the good order and military etc. (late getting up out of bed)	Cpl.Irvine	4 days C.B.	12-2-41	Maj.Brooks	
Debert	2-7-41			A.A.Sec 15(1) A.W.L. from 0600 hrs 2-7-41 to 1120 hrs 2-7-41	Cpl.Laird Rfn.Johnston	7 days C.B.	3-7-41	Capt. Brooks	
Proceeded on Embarkation Leave to Winnipeg, Man, from 7-7-41 to 18-7-41									
(1)Aldershot	27-11-41			A.A.Sec 15(1) Absenting himself without leave	Sgt. May Sgt.Trotman Cpl.Zeiler	14 days Field Pun.	3-12-41	Lt.Col.Bingham	
(2)Wykehurst	28-11-41 (II)			A.A.Sec 40.An act prejudice of good order etc.					

(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
Haiglines	31/5/42	Rfn.		A.A. Sec 15(1) Charged with W.O.A.S. A.W.L. from 2359 hrs 31-5-42 to 2355 hrs 21-6-42 20 days,23hrs,55 minutes	Dog. Evidence Cpl.J.J.Miller L/Cpl.White Cpl.Minaker	27 days Det'n.	23-6-42	Lt-Col T.H.HEWITT	For.21 dayspay FRI 149(1)(a) For.27days pay LRI149(1)(b) Total For. 48 days pay.
(3)Wykehurst	26-11-41			A.A.Sec15(1) Absenting himself without leave		10 days only			
Wykehurst	20-1-42			A.A.Sec.9(2)Disobeying a lawful command given by a Sup.Off. Certified true copy - W.Paulson Lieut.	Cpl.Zeiler	16 days ? Field Pun.	22-1-42	Major J.A.Wilson	
Field	15-9-42			A.W.L. from 1100 hrs 15-9-42 to 1030 hrs 16-9-42 (23 hrs 30 mins)	Cpl.G.Maille	28 days Det'n	17-9-42	Lt.Col.W.J.Moryk	

CERTIFIED TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY

(W.G.WHITE) Captain
Adjutant 7 Bde Wing 3 CDIRU.

II. 143

PTE OSWALD A.E

Correspondence to be PINNED here.

C.D. Kingsmill Maj

II-143

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 April, 19 43

Whereas it appears to me, the undersigned, an officer in Command of 4 Canadian Armoured 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 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:~~ 77W

*(~~1. Three Officers to form the Court.~~) 77W

*(~~2. A Field Officer as President.~~) 77W

~~for the following reasons, namely:~~] 77W

DEFENDING OFFICER

PROSECUTING OFFICER

JUDGE-ADVOCATE

Capt A.C. HALL HQ 4 Cdn Armd Div

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	C.D. KINGSMILL 15 Cdn Fd Regt	RCA

Members.

Rank.	Name.	Regiment.
Capt	R.B. JOHNSTON 69 Cdn Tk Trptr Coy	RCASC
Capt	F. BOOTHROYD 4 Cdn Armd Div 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 F.F. Worthington

(F.F. WORTHINGTON) Maj-Gen

Commanding 4 Cdn Armd 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)
B 85701 Pte Arthur Earnest OSWALD 69 Cdn Tk Trptr Coy RCASC	First Charge A.A. 18(4)	Not Guilty	Guilty	
	Second Charge A.A. 15(1)	Not Guilty	Guilty	
	Third Charge A.A. 22	Guilty	Guilty	
	See charge sheet att			
			1 year's imprisonment and to be put under stoppages of pay until he has made good the sum of $200.00 towards the cost of replacement C.D. Kingsmill Maj 26 Apr 43	Sentence Confirmed. 77 Worthington C.O.C. 4 Cdn Armd Div. MAY 1 1943 The vehicle having been recovered but stripped of all moveable parts to the extent of £38-13-1, I hereby remit the difference namely £6-1-11. 77 Worthington (F.F. WORTHINGTON) Maj-Gen GOC 4 Cdn Armd Div

* 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) 77 Worthington (F.F. WORTHINGTON) Maj-Gen
Commanding 4 Cdn Armd Div
Convening Officer (e)

(Signed) C.D. Kingsmill Maj
15 Cdn Fd Regt.
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 26th day of April, 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)
5. The Judge Advocate
6. Court Reporter

were duly sworn.

Signed this 26th day of April 1943.

C.D. Kingsmill Maj
President of the Court Martial.

* Omit if not applicable.

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 19~~

President of the Court Martial.

* See footnote (a) on page 762 of R.C.I. 1929.

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.)~~ 77W

Signed this 1 day of May 1943.

77 Worthington
Confirming Officer. C.O.C. 4 Cdn Armd Div.

* 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.

MAY 1 1943

Promulgated and extracts taken in the case of ho. B85701 PTE OSWALD A.E. 69 Cdn Tk Trptr Coy RCASC

(a) (Dated) 22 May 1943 (Signed) H.D. Hogg Maj. OC ho 69 Cdn Tk Trptr Coy RCASC.

Promulgated and extracts taken in the case of ho B85701 PTE OSWALD AE. 69 Cdn Tk Trptr Coy RCASC

(Dated) 6 July 1943 (Signed) H.D. Hogg Maj OC ho 69 Cdn Tk Trptr Coy RCASC

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] 1937 20 M. 5-41 KJL/8265(3) Gp. 606/3

" The Judge Advocate-General, Canadian Army Overseas, having advised that the conviction upon the first charge in these proceedings is invalid, I hereby direct that the record of the conviction on the said charge be and the same is hereby removed and the accused relieved from all consequences of his trial thereon. And I, an authority having power to mitigate, remit or commute the punishment awarded by the sentence awarded by the sentence, having set aside the finding on the first charge, do hereby remit the stoppages of £38-13-1 as awarded by the Court and previously remitted by me to such amount, and I do hereby, having regard to the offences in the charges which, with the findings therein, are not invalid, commute the sentence to read "to undergo detention for six months."

F. F. Worthington

In the Field
28 June 1943

(F.F.WORTHINGTON) Major-General
GOC 4 Cdn Armd Div.

APPENDIX "B"

C H A R G E S H E E T

The accused, B 85701, Pte. A.E. Oswald, 69 Tank Transporter Company, Royal Canadian Army Service Corps, attached to Headquarters, Royal Canadian Army Service Corps, 4 Canadian Armoured Division, a soldier of the Canadian Army is charged with:-

1st Charge

A.A. 18 (4)

STEALING PUBLIC PROPERTY

- in that he -

in the field, on 3 April 1943, did steal a Government vehicle, 5 c.w.t. Willys Light Utility Vehicle, No. CM 4230974., value $1550.

2nd Charge

A.A. 15 (1)

ABSENTING HIMSELF WITHOUT LEAVE

- in that he -

in the field on 3 April 1943 at 1900 hours, absented himself from Headquarters, Royal Canadian Army Service Corps, 4 Canadian Armoured Division, until apprehended in London at 1330 hours, on 14th April 1943.
(Absent 10 days, 18 hours, 30 minutes.)

3rd Charge

A.A. 22

WHEN IN ARREST, ESCAPING

- in that he -

In London on 14 April 1943, when put under close arrest by Cpl Gervais A., and L/Cpl Herbert, B.S., of No. 6 Canadian Provost Corps, did escape.

Signed in the field

22 April 1943.

ATD/DGR

(A.T. Dixon) Major
A/C.R.C.A.S.C.
4 Cdn Armd Division
Cdn Army Overseas

26 Apr 43

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

(F.F.WORTHINGTON) Maj-Gen
GOC 4 Cdn Armd Div.

APPENDIX "A"

CHARGE SHEET

The accused, B 85701, Pte. A.E. Oswald, 89 Tank Transporter Company, Royal Canadian Army Service Corps, attached to Headquarters, Royal Canadian Army Service Corps, 4 Canadian Armoured Division, a soldier of the Canadian Army is charged with:-

1st Charge

A.A. 18 (4)

STEALING PUBLIC PROPERTY

- in that he -

in the field, on 3 April 1943, did steal a Government vehicle, 8 c.w.t. Willys Light Utility Vehicle, No. CM 4230974., value $1550.

2nd Charge

A.A. 15 (1)

ABSENTING HIMSELF WITHOUT LEAVE

- in that he -

in the field on 3 April 1943 at 1900 hours, absented himself from Headquarters, Royal Canadian Army Service Corps, 4 Canadian Armoured Division, until apprehended in London at 1330 hours, on 14th April 1943.
(Absent 10 days, 18 hours, 30 minutes.)

3rd Charge

A.A. 22

WHEN IN ARREST, ESCAPING

- in that he -

In London on 14 April 1943, when put under close arrest by Cpl Cervais A., and L/Cpl Herbert, R.S., of No. 6 Canadian Provost Corps, did escape.

Signed in the field
22 April 1943.

(A.T. Dixon) Major
A/C.R.C.A.S.C.
4 Cdn Armd Division
Cdn Army Overseas

ATD/DGR

26 Apr 43

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

(F.F. WORTHINGTON) Maj-Gen
GOC 4 Cdn Armd Div.

MEDICAL CERTIFICATE

Certified that B/85701 Pte. OSWALD, A.E., 69 Tk Tptr Coy attached HQ R.C.A.S.C. 4 Cdn Armd Div., is fit to undergo trial by F.C.C.M.

25 Apr 43

James A Dauphinee Maj
No. 8 GENERAL HOSPITAL, RCAMC.

MEDICAL CERTIFICATE

Certified that B/85701 Pte. OSWALD, A.E., 69 Tk Tptr Coy attached HQ R.C.A.S.C. 4 Cdn Armd Div., is fit to undergo trial by F.C.C.M.

25 Apr 43

James A Dauphinee Maj.
No. 8 GENERAL HOSPITAL, RCAMC.

T-95

PROCEEDINGS OF TRIAL

Accused B 55701 Pte (Number) (Rank) Arthur Earnest (Christian Names) OSWALD (Surname) - 69 Cdn Tk Trptr Coy RCASC (Unit)

Held in the Field in England (Country) on 26 Apr 45

President Major C.D. KINGSMILL (Rank) (Name) 15 Can Fd Regt RCA (Unit)

Members Capt R.B.JOHNSTON -69 Cdn Tk Trptr Coy RCASC -Capt F.BOOTHROYD 4 C.A.D. Tpt Coy RCASC

Judge-Advocate (if any) Capt A.C.Hall Hq 4 Cdn Armd Div

Prosecuting Officer Capt E.D.H. Wilkinson 4 Cdn Armd Bde Coy RCASC

Defending Officer Capt J.W. Baxter 10 Cdn Inf Bde Coy RCASC

(The following procedure must be actually carried out)

The President produces the Convening Order, Charge Sheet(s) and Summary of Evidence. (Rs.P. 17(E); 22(A)).

The President, in closed Court (R.P. 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 (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.108)

The accused is (are) brought before the Court, and at 1120 hours the trial commences.

The Prosecuting Officer produces a Medical Certificate under K.R. (Can) 557 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 _____ as interpreter? Ans _____.

Do you object to M 11436 Sgt. Elliott, F.W. Hq 4 Cdn Armd Div as shorthand writer? Ans No sir

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? Ans No sir

The President, Members, Judge-Advocate, Officers Under Instruction, interpreter and shorthand writer are duly sworn. (R.P.26-27).

The Charge Sheet(s) is (are) initialled by the President.

The Prosecuting Officer informs the Court that the accused has (not) elected trial by Court-Martial (A.A.46(8))

President to accused
Do you wish to make any special pleas before arraignment, that is to say, before you plead guilty or not guilty? Ans. No sir (If special plea(s) is (are) made for separate trial on one or more charges (Rs.P.62(E), 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.30 R.P.57); record such plea and evidence (if any) on separate sheet(s) to be initialled by 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 (R.P.112). He pleads as follows: First Charge Not Guilty Second Charge Not Guilty Third Charge Guilty Fourth Charge _____

(For procedure on alternative charges, see R.P.37 fn 2.) Further proceedings are recorded on pages hereto attached.

(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)_ _ _ _ _

1. R.P.35(B) is complied with in respect to Guilty pleas, by the President ascertaining that accused understands the nature of the charge(s) (fn 3) and his plea thereto, explaining the difference in procedure by that 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 proceedings 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? (R.P.39(A)) Ans No sir

3. The Prosecutor's opening address (if any) (R.P.39(B)) and the evidence for the Prosecution are recorded on separate sheets, initialled by the President and attached hereto.

4. The Prosecution is closed (if submission that no prima facie case established, see R.P.40 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)

6. President to accused:
Q. Do you apply to give evidence yourself as a witness?
A. Yes sir
Q. Do you intend to call any other witness in your defence?
A. Yes sir
Q. Is he a witness as to character only?(R.P.40(B))
A. No sir

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 Rs.P. 40, 41 and 42.)

9. The Court is now closed to consider the finding. (Rs.P. 47 and 117) (Record finding on p.3.)

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.118 (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 sir

(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.)

(over)

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.)

14. President to accused.
Q. Do you wish to make any statement in mitigation of punishment (R.P.37(C) Ans. Yes sir
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 (R.P.37(C)) Ans. _____
(Such evidence, confined to character only, is recorded on separate sheet, initialled by the President and attached hereto.)

16. Capt E.D.H. Wilkinson 4 Cdn A md Bde Coy RCASC sworn,
(Rank) (Christian Names) (Surname) (Unit)
produces Statement of Character and Service, and Field Conduct Sheet, duly certified by the Officer having custody of the Regimental Books. The said documents are read, makred " ", and " ", initialled by the President and attached to the proceedings (R.P.46.).

17. President to accused:
Q. Do you wish to address the Court on the Statements of Character, Service and Conduct, and in mitigation of punishment? (R.P.46(D)) Ans. Yes sir, through my defending officer.
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 p.3.)

(Punishments, A.A. 44 (R.A. Can) 563-566; one sentence only awarded, R.P.46; jurisdiction of F.G.C.M., R.P. 116)

The sentence is not announced to the accused by the Court.

D Kingsmill Maj
(Signature of President)

Opening Address by the Prosecuting Officer

I have no opening address other than to state that in as much as the plea has been not guilty of the first two charges and guilty of the third, any evidence I produce will cover mainly the first and third charges.

First Witness for the Prosecution.

M 45332 Cpl Gwillian, K.C. HQ RCASC 4 Cdn Armd Div having been duly sworn is examined by the Prosecuting Officer.

Q.1. Will you identify yourself to the court?
A.1 I am M 45332 Cpl Gwillian K.C., HQ Comd RCASC 4 Cdn Armd Div.
Q.2 Can you explain to the court what you know of the allegation that the accused has taken a vehicle from the car park of this command?
A.2 I am the MT Cpl, of this HQ. On the morning of 4 Apr 45 L/Cpl Burgess came over to the hut and asked me if I knew where Capt Smith's vehicle was. We checked the car park and also checked the officer's mess and could find no trace of the vehicle, so we then checked our orders and saw who was on guard and found out that Pte Sidney was and we questioned him in regards to the vehicle going out. As a result of this I reported to Capt Dix that a vehicle was missing and that the vehicle had left the lines the night previous and had not returned and I instructed all the guards from that time on, if the vehicle returned it was to be reported to the duty officer immediately.
Q.3 Did you know the number of this vehicle?
A.3 Yes sir, it was CM 42030974.
Q.4 Is it on charge to this H.Q.?
A.4 Yes sir, I have a slip signed by the Adjutant that it was taken on strength of this H.Q.

Submitted as evidence but not accepted by the Court

Q.5 Have you seen or heard of this vehicle since that time?
A.5 No sir.
Q.6 No one has reported to you that the vehicle has returned?
A.6 No sir.
Q.7 Did any driver ask for a work-ticket for this vehicle or had the vehicle been detailed for any particular duty?
A.7 Not to my knowledge sir.
Q.8 Had you given any instructions for that vehicle to leave the car park?
A.8 No sir.
Q.9 Is there any form of checking these vehicles when they leave the car park?
A.9 At that time we did not have one of these checking out sheets which we have now, so when each driver went out we took his number and name and the vehicle.
Q.10 Have you any means of checking these?
A.10 No sir, just from the guard, he ckecks them going out and he just checks the work-tickets.

XXXX

The Witness is cross-examined by the Defending Officer

Q.11 Does the driver necessarily have to come to you and report if he is going out?
A.11 No sir.
Q.12 If an officer requires a vehicle he just tells the driver and the driver goes up and reports to him, is that right?
A.12 Yes sir.
Q.13 Since you have been MT Cpl you have instructed the guard to check work-tickets?
A.13 Yes sir.
Q.14 Did he check the work-ticket of this vehicle involved?
A.14 He did sir.

The Court questions the witness

Q.15 The next day did you check the work-tickets that had been issued for 5 Apr 45?
A.15 I did not sir.
Q.16 Did anybody?
A.16 I do not know if they were or not sir.

Q.17 Are they available?
A.17 They are sir.
Q.18 Can you explain the machinery of the MT park, how work-tickets were issued, how they were withdrawn, and how they were checked?
A.18 Each time a car is ordered the driver signs his name and number and number of the vehicle in a book which we keep. When the work order is completed it is turned in to me and I sign it and put it away.
Q.19 Are they issued each trip or by the week?
A.19 The driver has it until it is completed sir.
Q.20 They it could be a month or a day?
A.20 Yes sir.
Q.21 Is there any cross-check?
A.21 They are filed away when completed.
Q.22 There is no check?
A.22 No sir, each night the driver marks his mileage in the log book.
Q.23 For each individual trip there is a record of the trip put on a line of the work-ticket?
A.23 Yes sir.
Q.24 Who puts this in?
A.24 The driver puts this in and the officer in charge of the trip signs it.
Q.25 How many 5 cwts did you have at that time?
A.25 Seven sir.
Q.26 Are the work-tickets relevant to these dates available for the other 6 vehicles?
A.26 I believe they are sir.
Q.27 Who is normally the driver of the vehicle that is missing?
A.27 Webber is sir, he was attached to us from the 69th, but he has gone back now sir.
Q.28 In whose possession would be the work-ticket?
A.28 I should have it filed away.
Q.29 On the date in question who should have had the work-ticket?
A.29 Webber sir, he was Capt Smith's driver and the work-order would be left with the vehicle.
Q.30 It is not left with the man himself?
A.30 It is either with the vehicle or with the man.
Q.31 Have you seen the work-tickets since of the other six vehicles?
A.31 I have sir.
Q.32 Was the name of the accused listed as driver on any of these?
A.32 No sir.
Q.33 You are sure of that?
A.33 Yes sir.

The WITNESS WITHDRAWS

Second Witness for the Prosecution

H 65481 L/Cpl Burgess, T.K., HQ RCASC 4 Cdn Armd Div having been duly sworn is examined by the Prosecuting Officer.

Q.1 Will you identify yourself to the Court?
A.1 I am H 65481 L/Cpl Burgess, T.K. HQ RCASC 4 Cdn Armd Div.
Q.2 Would you explain to the court what you know about the disappearance of this vehicle in question?
A.2 On Sunday 4 Apr Capt Smith was enquiring if I knew where his vehicle was and I went with the Cpl of the transport to the vehicle park and found the vehicle was missing.
Q.3 Have you seen the vehicle since that time?
A.3 No sir.
Q.4 Were you on duty that day?
A.4 Yes sir.
Q.5 In what capacity?
A.5 As duty N.C.O. sir, I called the roll at 2215 hrs.
Q.6 Have you any responsibilities with respect to the M.T.?
A.6 Just motorcycles sir.
Q.7 When you called the roll that night was there anything out of the ordinary at that time? Were all the men present?
A.7 Pte Oswald was missing at 2215 hrs sir.
Q.8 Have you seen Pte Oswald since that time?
A.8 Not until the day he was escorted back to our HQ sir.
Q.9 Do you know Pte Oswald? Can you identify him to the court?
A.9 The witness indicates the accused to the court.

The Defending Officer cross-examines the witness

Q.10 On 3 Apr you were duty N.C.O.,
A.10 Yes sir
Q.11 Just what duties did that consist of?
A.11 Calling the roll in the morning and evening sir.
Q.12 What time did you call the roll in the evening?
A.12 At 2215 hrs sir.
Q.13 Were there any men absent without leave?
A.13 There was one man absent from his quarters at that time sir.
Q.14 Is that all?
A.14 Yes sir.
Q.15 You are definitely sure there were not more men A.W.L. at 2215 hrs 3 Apr 43?
A.15 At that time sir we had our roll call for men here and there was another roll call at the officers' mess and on that particular evening there were two other men absent sir.
Q.16 Was this on your roll call?
A.16 No sir.
Q.17 You have no responsibility as N.C.O. in charge of vehicles?
A.17 Just motorcycles sir.
Q.18 When you checked the park for vehicles did you know what you were looking for?
A.18 Yes sir, a Willys Light Utility ¼ CWT No. CM42030974 which was assigned to Capt Smith.

The WITNESS WITHDRAWS

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

Third Witness for the Prosecution

C 32089 Pte Sidney E., HQ RCASC 4 Cdn Armd Div having been duly sworn is examined by the Prosecuting Officer.

Q.1 Will you identify yourself to the Court?
A.1 I am Pte. C 32089 Pte Sidney E., Comd HQ RCASC 4 Cdn Armd Div sir.
Q.2 Will you tell the court what you know of the disappearance of the ¼ cwt on Apr 3rd, 1943?
A.2 I was on guard duty on the main entrance to this HQ. At approximately 1900 hrs the accused Pte Oswald came through the gate and he was driving a ¼ cwt car. He was alone and I asked him for his work ticket. He said he was going down to the officers' mess to have it signed. I was just back from leave at that time, a few hours, and when I left on leave it was a common practice to proceed to the officers' mess to have work-tickets signed. At the time the accused left this HQ I knew he was attached from the 69th but I did not know his name. At a later date on an identification parade I recognized the accused and he gave his name as Pte Oswald.
Q.3 Is the driver of the vehicle at that time present in the Court room?
A.3 Yes sir.
Q.4 Point him out to the court?
A.4 The Witness indicates the accused
Q.5 Were there any passengers in the vehicle?
A.5 No sir, he was alone.
Q.6 Have you seen this vehicle since?
A.6 No sir I have not.

The Witness is cross-examined by the Defending Officer

Q.7 On the night of 3 Apr 43 you claim that Pte Oswald was driving the jeep out of the main gate?
A.7 That is right sir.
Q.8 Did you check the work ticket?
A.8 He just shoved it up sir and there was no signature on it.
Q.9 Was it a Work ticket?
A.9 Yes sir
Q.10 What did he tell you?
A.10 He told me he was on his way to the officers' mess to have it signed.
Q.11 Was it a common practice for you to allow one of your unit vehicles to drive out of the gate with a stranger behind the wheel?
A.11 He was not a stranger I had seen him in the area that afternoon.

Q.12 What was he doing?
A.12 Just walking around.
Q.13 How long have you known Pte Oswald?
A.13 That afternoon was the first time I had seen him sir.
Q.14 When was the next time you saw him?
A.14 When he was driving out the main gate.
Q.15 And the next time?
A.15 On the identification parade sir.
Q.16 How many vehicles went through your gate during your tour of duty?
A.16 I cannot recall sir.
Q.17 You don't know, or remember all the vehicles that went out?
A.17 I don't know exactly how many went out.
Q.18 Then how can you say you have not seen the vehicle since?
A.18 I know the accused drove a vehicle out and I know he did not drive one in sir.
Q.19 You cannot say for sure you have not seen the vehicle since?
A.19 No sir.
Q.20 Were there any marks on the vehicle by which you could identify it?
A.20 No sir I don't believe there were.
Q.21 What sign had it painted on it?
A.21 Our colours of red and green with an 80 on it sir.
Q.22 You state you just came back from leave at that time?
A.22 Yes sir.
Q.23 What time did you get back?
A.23 At 0130 hrs sir.
Q.24 You had only seen Pte Oswald once?
A.24 Yes sir, that was in the afternoon sir.

The Court questions the Witness

Q.25 How far is the officers' mess from the gate?
A.25 Approximately a quarter of a mile sir.
Q.26 What was your tour of duty that night?
A.26 From 1600 hrs to 0100 hrs on the 4th sir.
Q.27 How closely were you able to examine the work-ticket?
A.27 I was right up to him sir.
Q.28 What is the practice with reference to putting the name of the driver on the work ticket?
A.28 It is up near the top in the centre.
Q.29 Did you notice the name up there on this work ticket?
A.29 No sir, I did not.
Q.30 Did you receive any instructions when you went on guard?
A.30 Yes sir, I was to check identification, traffic control and the work tickets.
Q.31 Can you say what your instructions were regarding the work tickets?
A.31 They were not to go out unless they were authorized to do so sir.
Q.32 During your tour of duty was this the only jeep to go out?
A.32 No sir, there were several.
Q.33 What were the condition of the work tickets?
A.33 They were all right sir.
Q.34 Were they signed?
A.34 Yes sir.
Q.35 This was the only questionable one?
A.35 The only one sir.

THE WITNESS WITHDRAWS

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

Fourth Witness for the Prosecution

No. D 91711 L/Cpl Gervais, No 6 Coy Cdn Provost Corps having been duly sworn is examined by the Prosecuting Officer.

Q.1 Will you identify yourself to the Court?
A.1 I am D 91711 Gervais A L/Cpl.
Q.2 What unit?
A.2 No 6 Coy Cdn Provost Corps, London area.
Q.3 Were you on duty on 14 Apr 43?
A.3 Yes sir.
Q.4 On what tour of duty?
A.4 I was on patrol on Charing Cross road and Oxford street sir.
Q.5 Did any incident arise that day?
A.5 Yes sir.
Q.6 Tell the court what it was?
A.6 At about 1330 hrs I approached the accused and asked to see his pass. He started to look for his pass and after a short time he passed the remark he had lost his pass, and said he believed he had lost it at the tailor shop around the corner. I went with him to look in this shop and we proceeded to the second floor and looked in the lavatory, on the floor and tables and chairs and did not find any pass. I realized my duty was to put him under close arrest until he could prove he was on leave and from there we went out of the store and along Charing Cross Road. As we were walking along the accused pushed me severely in the ribs and did the same to the L/Cpl with me and with the push I went about four feet ahead and the accused about turned and ran down the road and across the street. We started to chase him and finally caught up to him in a basement on the next street. I ordered him to go quietly and we escorted him to our detention room with no further trouble and turned him over to the N.C.O. in charge.

The Defence declines to cross-examine the Witness

The Court questions the Witness

Q.7 Do you see the accused anywhere in this room?
A.7 Yes sir
Q.8 Will you indicate him?
A.8 Witness indicates the accused.

Fifth Witness for the Prosecution

Capt D.A. Harper, Adjt., HQ RCASC 4 Cdn Armd Div having been duly sworn is examined by the Prosecuting Officer

Q.1. Can you identify yourself to the Court?
A.1 I am Capt D.A. Harper, Adjutant Comd HQ RCASC 4 Cdn Armd Div.
Q.2 Will you tell the court whether the vehicle in question was on our charge?
A.2 The vehicle in question No.CM 42030974, Willys Light Utility 5 cwt was on charge to this HQ at the time it was stolen.
Q.3 What is the value of this vehicle?
A.3 I checked with Capt J.R. Allen, ADOS 4 Cdn Armd Div and he states it is valued at $1,550.00 as given to him by DDOS First Cdn Army.

The Defending Officer declines to cross-examine the witness

Court is adjourned until 2 o'clock P.M.

Court is re-opened at 2 o'clock P.M.

First Witness for the Defence

M 45332 Cpl Gwillian K.C., HQ RCASC 4 Cdn Armd Div is called as first witness for the defence, and having admitted to the court that he is still under oath, is examined by the Defending Officer.

Q.1 Will you state what action you took on the evening of 4 Apr 43 with respect to two men being A.W.L.?
A.1 I had warned the guard to report to me immediately upon their return which they did and I reported to the Staff/Sgt in the Orderly room the next morning.
Q.2 Did these men report to you?
A.2 They did sir.

Objection by the Prosecuting Officer that this witness should not have been brought in as no point had arisen since his examination which would warrant him being re-examined.

Objection is not sustained by the Court in view that any new facts which may come to light and further the case of the accused in fairness to him should be brought out, to which the Prosecuting Officer agrees.

Q.3 Will you state in your own words and on whose authority you were connected with these two men?
A.3 I was in charge of the fatigues while the R.S.M. was on leave and these men came under me. Snow was to drive the Padre that morning and Webber was to go on guard and when the time came for them to go on duty they were not here.
Q.4 How did you know?
A.4 Because I checked sir.
Q.5 What did the check reveal?
A.5 I found that they were not in camp.
Q.6 By your own personal search?
A.6 Yes sir.
Q.7 Were they out on pass?
A.7 No they were not sir.
Q.8 As MT Cpl what duties did Snow and Webber have?
A.8 Snow was to drive the Padre and Webber was to drive Capt Smith.
Q.9 Was Webber the driver of this vehicle that Oswald is supposed to have taken?
A.9 That is right sir.

The Prosecuting Officer declines to cross-examine the witness

The Court questions the witness

Q.10 Can you tell me when Webber turned up again?
A.10 It was the next morning sir, they both came in together, I cannot remember the exact time of their return.

The Witness withdraws

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 accused requests permission to confer with his Defending Officer and the court grants a recess of ten minutes.

Second Witness for the Defence

B 85701 Pte Oswald A.E., 69 Cdn Tk Tprtr Coy RCASC, att HQ RCASC 4 Cdn Armd Div having been duly sworn is examined by the Defending Officer.

Q.1 Will you go ahead and tell the court what you know about these charges that have been laid against you?
A.1 Sirs, what I have to tell you is in regard to my movements on the night of April 3rd. I am charged with being AWL from 1900 hrs but I left here at approximately 1600 hrs. I proceeded from here to Aldershot and not having any transportation had to walk and arrived at Aldershot at the Queens Hotel at approximately 1830 hrs. I had a couple of drinks, in fact had quite a few drinks and I don't remember anything more from the time say 2100 hrs until I wakened in a train station in London. I realized the fact that I was AWL so I stayed away. I have no excuse except that I was fed up with being a clerk. I have been fed up with it for quite a while and have tried to get out of it several times. I was a Cpl in charge of the Orderly Room in the Holding Unit and submitted a request that I be permitted to relinquish my trades pay and Cpls' rank and be sent to the field as a D.R.. I was reverted to the rank of Pte at my own request and I went to the field thinking I was going as a D.R. but I found I had been sent there as a clerk. I requested the night I was taken on strength of a field unit to be paraded and asked to be made a D.R. and was told that the occasion might arise at a later date but at the present I would remain a clerk. These are the true facts and a true statement of my movements on the night of 3 Apr 43.

The Witness is cross-examined by the Prosecuting Officer

Q.2 How long does it take to get to Aldershot from here?
A.2 You can walk there in about 25 minutes.
Q.3 From here?
A.3 Yes sir.
Q.4 How did you get to Aldershot that night?
A.4 I walked the largest part, and I caught a bus in the city limits.
Q.5 How far is Aldershot from here?
A.5 Approximately 2½ miles sir.
Q.6 I suggest to you it is between 4 and 5 miles?
A.6 You mean Aldershot sir.
Q.7 Yes I do, what have you to say about that?
A.7 I have never clocked it sir. I never had the occasion to find out exactly how far it is.
Q.8 You would not say it was that far then?
A.8 I would not say it is that far sir.
Q.9 You say you were tired of being a clerk, What was your position in this H.Q.?
A.9 I was in the Orderly room as filing clerk and general clerk.
Q.10 You were not employed as a driver?
A.10 No sir.
Q.11 You are pretty fed up with this work in an office?
A.11 I am sir.

The Court questions the Witness

Q.12 When you left here did you leave alone?
A.12 I left alone sir.
Q.13 Who saw you go?
A.13 I could not say anyone saw me sir.
Q.14 Was it after supper?
A.14 I could not say I did not eat supper. I was a witness on a Court Martial at Corps Tps that day.
Q.15 What time did you return?
A.15 I returned approximately 1600 hrs sir.
Q.16 Why did you not eat here?
A.16 Because I had already got something to eat at a tea shop just before I left Corps Tps.
Q.17 Who did you see in Aldershot thatnight whom you knew?
A.17 I cannot say that I saw anyone at all sir.

Q.18 You heard the testimony of Pte Sidney today?
A.18 Yes sir.
Q.19 What have youto day about that?
A.19 I would say that Pte Sidney did not see me that afternoon between 1400 and 1600 and I have nothing more to say about it except Pte Sidney is mistaken when he says he saw me going out of the lines with a vehicle.
Q.20 Were you present on a identification parade held recently?
A.20 Yes sir.
Q.21 What were the circumstances?
A.21 I was among a parade that was formed to identify me, there were 12 or 15 others they were all strangers to this unit and had not been here before and Pte Sidney picked me out that day as being Pte Oswald.
Q.22 Did he not ask you your name or did you tell him your name?
A.22 I told him my name when he picked me out.
Q.23 What did he identify you as?
A.23 As the driver of the vehicle sir.
Q.24 You suggest that he knew you as the driver of that vehicle?
A.24 Upon his own statement he had seen me around the area that afternoon and picked me out on the parade.
Q.25 There were no other soldiers of this unit on that parade?
A.25 To the best of my knowledge there was not.
Q.26 Can you swear to that?
A.26 I do not know whether there was or not.
Q.27 You say you left here about 1600 hrs?
A.27 Yes sir I did.
Q.28 You were away from at least 1600 hrs on?
A.28 Yes sir.
Q.29 You say you woke up in a station in London, what station was it?
Q.29 I don't know. I cannot recall whether it was Waterloo or Euston or Kings Cross, but when I woke up it was the next morning.
Q.30 What does the station look like from the inside?
A.30 There was a high picket fence, and there were two ways out, and the back way you had to go up some steps and go through a gate at the entrance to the station.
Q.31 How long have you been over here?
A.31 17 months sir.
Q.32 You have been in London several times?
A.32 I have been there quite often.
Q.33 You should surely know then the London station you were in?
A.33 I could not positively state which it was.
Q.34 How much money did you have when you started?
A.34 £7-15-0
Q.35 How much did you have when you woke up?
A.35 I had over £6-0-0 sir.
Q.36 Did you have a ticket stub or did anyone take your ticket?
A.36 I did not have a ticket stub at all.
Q.37 When you came to your senses on which side of the barrier were you?
A.37 I was in the train sir.
Q.38 How did you get out of the station?
A.38 I paid the attendant at the gate.
Q.39 How much did you pay him?
A.39 I cannot recall exactly how much I paid him.
Q.40 How was the barrier arranged in that particular station?
A.40 The barrier was a high picket fence and you had two gates to go through.
Q.41 It was not Waterloo?
A.41 No sir.
Q.42 What kind of a picket fence was it?
A.42 It was made of wire or iron.
Q.43 When you got outside of the station what kind of a view did you see?
A.43 It was on a hill, when you got outside there is a hill slanting down.
Q.44 What kind of buildings were there, old or new type?
A.44 Modern type sir, I believe.
Q.45 What time did you say you woke up in the train?
A.45 About 7 o'clock sir.
Q.46 In the morning?
A.46 Yes sir.

Q.47 Did you get on the train at Ashvale or Aldershot?
A.47 Aldershot, I don't remember getting on the train, I know I was drinking, and I was not used to it, I don't drink very much I smoke a lot that is my only bad habit.
Q.48 What were you drinking?
A.48 I believe I started on Gin and then had some beer and the last I remember I was in a Pub and drinking double Gins.
Q.49 How did you procure the double gins?
A.49 I bought them sir.
Q.50 When you woke up in the station you still had over £6-0-0?
A.50 I said around £6-0-0.
Q.51 You had a little over £7-0-0 when you started?
A.51 I had £7-15-0.
Q.52 Was it at the Queens Hotel where you procured the Gin?
A.52 It was there I started sir.
Q.53 Do you remember any other places except the Queens?
A.53 No sir, I don't.
Q.54 You must have stayed there quite a while?
A.54 Yes sir I must have stayed there quite a while.
Q.55 Where did you go after you left the station?
A.55 To one of the service clubs sir.
Q.56 On what street?
A.56 On Charing Cross road.
Q.57 How did you get there?
A.57 I got a cab sir.
Q.58 How long did it take to get you there?
A.58 I don't know exactly sir.
Q.59 How much did he charge you?
A.59 1/6 I believe sir.

THE WITNESS WITHDRAWS TO HIS SEAT

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

Closing Address of the Prosecuting Officer

There are two charges before the Court and I will deal with the AWL first. You have heard the evidence of the witness Pte Sidney who alleges that at approximately 1900 hrs the accused left the main gate. The accused by his own admission says it was approximately 1800 hrs a difference of one hour and you have heard the evidence of the Provost who state they arrested him 10 days later at 1330 hrs. The evidence in that case has not been contradicted or denied so I don't think there is anything further to say in respect to that case.

For the one in connection with theft, it is however, a little different. There have been two statements made in court both contradictory. The evidence as given by the prosecution is given by a lad who had no cause to make up any story whatsoever. However, I refer you to extracts from M.M.L., page 22, para 33 (Quote) "The elements necessary----------owner". It defines stealing as it falls under 18(4). The prosecution have endeavored to cover these points, and I think two further references bear out the facts, I refer to the same book page 73 para 14 (Quote) "Intention ----act.". I also refer you to the Concise Oxford Dictionary which gives the definition of theft "Theft - stealing or larceny, and under stealing, to take away secretly for one's own use without right or leave, fraud or surprise." Theft has a definition that is quite clear and I think we should know what it means, that it is to take or make away with, without permission. The first witness is in charge of the MT park. He states there was not permission or authority for the accused to take away the vehicle in question and that no work order was made out. The accused admits that he is not employed as a driver that he is employed as a clerk and as such he has no right to drive a vehicle. Pte Sidney was on guard and he gave his evidence clearly and concisely withou hesitation. As was the practice he stopped this vehicle with the accused in it to examine the work-ticket and when questioning the driver he stated that he was going to the Officers' Mess to get it signed. Pte Sidney says it had been the practice prior to his going on leave for a driver to go to the mess to have his ticket signed and he therefore allowed him to go ahead. He did not know the driver but on an indentification parade he identified him and he also identified him in court today. The Defence has at no time brought forth evidence to contradict this identification and Pte Sidney was very definite in his choice. He was very definite today and therefore I don't think there can be any doubt entertained by the Court on that score. There is just one more point I would like to bring up. The accused has stated he was very fed up in being a clerk. It seems to me his actions were predeminated. He knew to the exact pound how much money he had on him on this date. His whole story shows that he had thought this matter out as regards obtaining a work ticket and going to Aldershot. He states he walked to Aldershot in 25 minutes. It is a long way to go in 25 minutes.

Closing address by the Defending Officer

Summing up the defence and dealing with the theft charge it is possible that Pte Sidney could have been mistaken the accused in the lines that night as Pte Sidney had only seen him once. He could not have seen him between the hours of 1400 and 1600. Pte Sidney stated he examined the Work ticket and he claimed that Pte Oswald was driving the car. He could not have examined the work ticket very closely.

Summing up by the Judge Advocate

It is the function of the Judge Advocate to sum up the evidence and explain the law in cases which may present difficulties. In doing so he must make sure that the court recognizes that the responsibility of the finding is their's alone and that their findings of fact should not be influenced by any remarks he might make.

In presenting its case the prosecution alleges and must prove two distinct things, first, they allege that the accused did a certain thing. This is a question of fact and this they must prove. Secondly, having proven that fact the prosecution contends that that act constitured an offence against the Army Act. This is a question of law and this the prosecution must establish.

In the present case the question of fact is contentious. A witness for the prosecution testifies that he saw the accused driving a 5 cwt out of the park on the 3rd of April. This is denied by the accused in toto. Upon you decision upon this point the whole question of fact appears to depend. In such a case as this there is no mandatory need of co-oberation. You saw the respective witnesses before you. You saw the manner in which they gave their evidence. You should be able to judge the credibility of the witnesses and having done so resolve the question of fact.

If you resolve that question of fact in favor of the accused you must acquit without considering the question of law. If on the other hand you decide it was the accused who drove that vehicle out of the park on the night in question you must further decide whether or not the action constituted and offence of theft. I now read you the definition of theft according to the larceny act and repeated in M.M.L. (Extract read). If I should attempt to anylyze each factor of this definition I should only sreced in confusing your mind. In every civilized country theft is an offence, and as reasonable intelligenct men you know what theft is. I think I do not need to explain this further.

In the question of absence without leave there appears to be no argument, the accused submitting that he went A.W.L. one hour earlier than that charged.

Since the onus of establishing his case is upon the prosecution the accused must be acquitted if the scales are so evenly balanced that they do not tip conclusively in favor of the prosecution that is if in considering the matter you have an honest, sincere doubt in your mind, then that doubt must be resolved in favor of the accused.

To the Defending Officer

Have you any objection to my statements or is there anything further you wish me to explain?
NO

To the Prosecuting Officer

And you
NO

The Court is closed to consider the finding

The Court is re-opened

Statement of the Defending Officer in mitigation of punishment

The accused enlisted in the Can Army on the 16 July 41 and came overseas, where he reached the rank of Cpl in the Orderly Room. He reverted at his own request in order to go to the field and has been a good soldier as borne out by his conduct sheet MFM 6. May this be considered by the court.

The Court is closed to consider the sentence

The Court is re-opened.

The sentence of the Court, being subject to confirmation will be announced at a later date

D Kingsmill Maj

EXHIBIT 2.

I CERTIFY that No. B-85701 . Rank PTE. . . Name . OSWALD . . . .

Unit 69th TK.TRNSP.R.C.A.S.C. . was arrested at LYDDA . . . .(Place)

at 1330 hrs .(hour) on 14 APRIL 43 .(date) and was at the time of his arrest he was wearing (Military Uniform) xxxxxxxxxxxxxxxxxxxxxxxx.

Signature of Provost-Marshall, 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).

LONDON
14 APRIL 43.

. . . . . Capt.
(M.Forn) D. A. P. M.,
London Area.

File No. 18/MP . . .

Officer Commanding,
69th TRK TRANSPORT COY. R.C.A.S.C.
Re:- B-85701 PTE. OSWALD A.E. of above unit

1. Forwarded for your information and necessary action, please, and disposal under C.A.R.O. No. 388 dated 29/Oct. 40.

London
14 APRIL 43. No complaints

Capt.
(M.Forn) D. A. P. M.,
London Area.

CHARGE

Army Form B 252
(See King's Regulations)

69th TANK TRANSPORT COY. Regiment

R.C.A.S.C. Battery / Squadron / Troop or Company

CHARGE against No. B-85701 Rank PTE.

Name OSWALD A.E.

Place LONDON Date of Offence 24 APRIL 43 [1900 hrs. 4.3.43]

OFFENCE W.O.A.S. absent without leave from ..... until apprehended by the CANADIAN PROVOST CORPS at about 1330 hrs. in CHARING CROSS ROAD LONDON.

25 (2) Stating a falsehood to and N.C.O. of the CANADIAN PROVOST CORPS at the same time date and place.

22 (3) WOAS did break arrest from and N.C.O. of the CANADIAN PROVOST CORPS at the same time date and place

40. (4) WOAS was improperly dressed at the same time date and place

(5) Striking an N.C.O. of the CANADIAN PROVOST CORPS at the same time date and place.

40 Names of Witnesses :— (6) Being in possession of another soldiers PAYBOOK AND PASS.

CPL. GERVAIS A. No.6 COY. CANADIAN PROVOST CORPS

L/C. HEBERT B.S. No.6 COY. CANADIAN PROVOST CORPS.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

R4589. Wt.W21972/580. 2,000,000. 7/41. K. & H. Ltd. G657/42

Statement of **EVIDENCE** in the case of:
B-85701 PTE. OSWALD A.E.
69th TANKS TRANS. COY. R.C.A.S.C.

Sir,

At LONDON on the 14 APRIL 43 at about 1330 hrs., I was on duty in CHARING CROSS ROAD in company with L/C HERBERT B.S. when I had the oca sion to check the a/m soldier. I approached him and asked him for his pass, he felt in his pockets to get his pass, but he obviously wasn't in possession of one, he maintained that he had a pass. He said" oh I've left it in the TAYLORS SHOP around the corner"

Not being satisfied with this explanation I placed him under close arrest and proceeded to PROVOST H/QTRS.,

On the journey to H/QTRS he struck out with his hands striking me and my partner in the RIBS, he broke close arrest and ran a considerable distance, and hid himself in SHOP CELLAR, where he was re-arrested and escorted to CDN. PROVOST H/QTRS. On being searched in the DET. BOOKING OFFICE he was found to be in posse sion of Two(2) A.F.B.295's belonging to PTE. TOOZE M-11294 of 1st BTN.CAL.HIGH OF CAN, also MBE parts I,II,III of PTE. TOOZE. At time of arrest he was improperly dressed, wearing F.S.CAP under lapel of right shoulder and tunic unbuttoned to four buttons

He was handed over to the N.C.O. i/c of the cells to be detained.

LONDON
14 APRIL 43

A. Gervais
B-81711 GERVAIS A. CPL.
No.6 C. CDN. PROVOST CORPS.

REMARKS

Sir, I have read over the above statement and corrobora same.

B. S. Herbert
L-27670 HERBERT BS L/C.
No.6 COY. CDN.PROVOST CORPS.

APPENDIX "A"

FORM OF APPLICATION FOR A COURT-MARTIAL

COMD. R.C.A.S.C. 4 Cdn Armd Div. Regiment

Station In the Field. Date 22nd April 19 43

Application for a F.G. Court-Martial

SIR,

I have the honour to submit Three charge s against

No. B-85701 Private ARTHUR EARNEST OSWALD - 69 Tk Trptr Coy RCASC.

of the formation under my command and request you will obtain the sanction of The GOC, 4 Cdn Armd Div. that a F.G. Court-Martial may be assembled for his trial at 4 Cdn Armd Div R.C.A.S.C. Headquarters

The case was investigated by (a) Major A. G. Bowes, and Capt. J. A. Willoughby

A Court of Inquiry was held on (b) 10th April, 1943. (To report on loss of vehicle). (date)

at In the Field. (Station).

President G. F. Stevenson, Major } Ranks,
Members J. A. Willoughby, Capt. } names
L. V. Earle, Capt. } and
All of CRCASC, H.Q. 4 Cdn Armd Div. } corps.

The accused is now at Tournay Bks, Farnborough, Hants His general character is (c) Good

I enclose the following documents (d):—

1. 1 Charge Sheet (in duplicate) (e).
2. Summary of Evidence, original (f) and duplicate ~~XXX~~ copies.
3. Original Exhibits (g).
4. List of witnesses for the prosecution and defence (with their present stations or addresses) (g).
5. List of Exhibits (h).
6. Correspondence (g).
7. Statement as to character (M.F.B. 355) and regimental and company, etc., conduct sheets (or Field Conduct sheets) of accused (g).
8. Statement by accused as to whether or not he desires to have an officer assigned by the Convening Officer to represent him at the trial (R.P. 14 (B)) (h).

Your obedient Servant,

Signature of Commanding Officer

(A. T. Dixon) Major,
A/CRCASC, 4 Cdn Armd Div.

To: G.O.C.
4 Cdn Armd Div,
Cdn Army England.

MEDICAL OFFICER'S CERTIFICATE

I certify that No B-85701 Pte. Arthur Earnest OSWALD Regiment, is* fit to undergo trial by Court-Martial.

Signature of the Medical Officer.

(H. B. Micklejohn) Capt.
att RCASC, 4 Cdn Armd Div.

*Insert "fit" or "unfit."

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

M.F.H. 321
40. P & S/650

APPENDIX "A"

FORM OF APPLICATION FOR A COURT-MARTIAL

COMD. R.C.A.S.C. 4 Cdn Armd Div. Regiment

Station In the Field. Date 22nd April 1943

Application for a F.G. Court-Martial

Sir,

I have the honour to submit Three charges against

No. B-85701 Private ARTHUR EARNEST OSWALD - 69 Tk Trptr Coy RCASC.

of the formation under my command, and request you will obtain the sanction of The GOC, 4 Cdn Armd Div. that a F.G. Court-Martial may be assembled for his trial at 4 Cdn Armd Div R.C.A.S.C. Headquarters

The case was investigated by (a) Major A. G. Bowes, and Capt. J. A. Willoughby

A Court of Inquiry was held on (b) 10th April, 1943. (To report on loss of vehicle). (date)

at In the Field. (Station).

President G. F. Stevenson, Major } Ranks,
Members J. A. Willoughby, Capt. } names
L. V. Earle, Capt. } and
All of CRCASC, H.Q. 4 Cdn Armd Div. } corps.

The accused is now at Tournay Bks, Farnborough, Hants. His general character is (c) Good

I enclose the following documents (d):—

1. 1 Charge Sheet (in duplicate) (e).
2. Summary of Evidence, original (f) and duplicate copies.
3. Original Exhibits (g).
4. List of witnesses for the prosecution and defence (with their present stations or addresses) (g).
5. List of Exhibits (h).
6. Correspondence (g).
7. Statement as to character (M.F.B. 355) and regimental and company, etc., conduct sheets (or Field Conduct sheets) of accused (g).
8. Statement by accused as to whether or not he desires to have an officer assigned by the Convening Officer to represent him at the trial (R.P. 14 (B)) (h).

Your obedient Servant,

Signature of Commanding Officer (A. T. Dixon) Major,
A/CRCASC, 4 Cdn Armd Div.

To: G.O.C.
4 Cdn Armd Div,
Cdn Army England.

MEDICAL OFFICER'S CERTIFICATE

I certify that No B-85701 Pte. Arthur Earnest OSWALD Regiment,

is *fit to undergo trial by Court-Martial.

Signature of the Medical Officer (R. B. Macklejohn) Capt.
att RCASC, 4 Cdn Armd Div.

*Insert "fit" or "unfit."

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

M.F.B. 321
40/P & S/630

APPENDIX "B"

Trial of No. B-85701 Pte. Arthur Earnest OSWALD,

69 Tk Trptr Coy. R.C.A.S.C.

att C.R.C.A.S.C. H.Q. 4 Cdn Armd Div.

LIST OF WITNESSES FOR THE PROSECUTION

M-45332 Cpl. Gwilliam, K. C.
C.R.C.A.S.C. H.Q. 4 Cdn Armd Div.

M-65451 L/Cpl. Burgess, T. K.
C.R.C.A.S.C. H.Q. 4 Cdn Armd Div.

D-91711 Cpl. Gervais, A.
No. 6 Provost Corps.

L-27870 L/Cpl. Herbert, B. C.
No. 6 Provost Corps.

C-32089 Pte. Sidney, E.
C.R.C.A.S.C. H.Q. 4 Cdn Armd Div.

Dated in the field this 22nd day of April, 1943.

(D. A. Hamper) Captain,
Adjutant, RCASC, 4 Cdn Armd Div.

APPENDIX "B"

Trial of No. B-85701 Pte. Arthur Earnest OSWALD,
69 Tk Trptr Coy. R.C.A.S.C.
att C.H.C.A.S.C. H.Q. 4 Cdn Armd Div.

LIST OF WITNESSES FOR THE PROSECUTION

M-45332 Cpl. Gwilliam, K. C.
C.H.C.A.S.C. H.Q. 4 Cdn Armd Div.

M-65451 L/Cpl. Burgess, T. K.
C.H.C.A.S.C. H.Q. 4 Cdn Armd Div.

D-91711 Cpl. Gervais, A.
No. 6 Provost Corps.

L-27870 L/Cpl. Herbert, B. C.
No. 6 Provost Corps.

C-82089 Pte. Sidney, E.
C.H.C.A.S.C. H.Q. 4 Cdn Armd Div.

Dated in the field this 22nd day of April, 1945.

(D. A. Harper) Captain,
Adjutant, RCASC, 4 Cdn Armd Div.

APPENDIX E

I, B.85701 Private ARTHUR ERNEST OSWALD, desire to have an officer assigned to represent me at my trial by Court-Martial.

(I desire the services of COLONEL O.H. BARRETT if he is available)

22 Apr 43.

Arthur E. Oswald Pte
(A.E. Oswald - Pte).

APPENDIX E

I, B.85701 Private ARTHUR ERNEST OSWALD, desire to have an officer assigned to represent me at my trial by Court-Martial.

(I desire the services of COLONEL O.M. BARRETT if he is available)

22 Apr 43.

Arthur E Oswald Pte.
(A.E. Oswald - Pte).

IN REPLY PLEASE QUOTE
No. 4AD/5-4-5-9

DEPARTMENT OF NATIONAL DEFENCE
ARMY

HQ 4 Cdn Armd Div
26 Apr 43 194

GOC 4 Cdn Armd Div

Application for F.G.C.M.
H 86701 Pte Oswald A.E.
69 Cdn Tk Trptr Coy. RCASC

1. Herewith application for F.G.C.M. for the trial of the m/n soldier.

2. The accused is charged with:
(a) STEALING PUBLIC PROPERTY
(b) A.W.L.
(c) WHEN IN ARREST ESCAPING.

3. The following are the facts: Pte Oswald on the night of 3 Apr 43 was driving a 5 cwt out of the car park. He was stopped by the guard and asked for his work-ticket. Oswald stated that he had a work-ticket made out, but had to drive up the rd to the officers' mess to have it signed. The guard being a new man permitted him to do so. Neither Oswald nor the 5 cwt were heard of until Oswald was arrested in London on 14 Apr 43. The 5 cwt has not as yet been recovered. At the time of his arrest Oswald was in possession of the service and pay-book of another soldier. It is understood that the Provost at London have investigated this.

4. It is recommended that the application be granted, and if the GOC concur may he endorse the order for trial on the charge sheet and sign the AFA 3 att.

(A.C.Hall) Capt
ADJA 4 Cdn Armd Div

ACH/FE

TIME 0900 DATE 26

NAT. DEF. B. 440
1,000,000—10-41 (2624)
H.Q. 1773-99-707

APPENDIX "G"

SUMMARY OF EVIDENCE

in the case of

B 85701 Pte. Oswald, A.E. 69 Tank Transporter Company, Royal Canadian Army Service Corps, attatched to H.Q. R.C.A.S.C. 4 Canadian Armoured Division is Charged with:

1. A.A. 18 (4) Stealing a government vehicle
2. A.A. 15 (1) Absent without leave for eleven days
3. A.A. 22 Escaping from arrest
4. A.A. 24 (2) Losing by neglect.

The Commanding Officer directs that the evidence shall be taken on oath.

The accused has had his rights explained.

FIRST WITNESS

M 45332 Cpl. Gwilliam, K.C., H.Q. R.C.A.S.C. 4 Canadian Armoured Division, having been duly sworn, states:

I am Cpl Gwilliam K.C., M 45332 of H.Q., R.C.A.S.C. 4 Canadian Armoured Division, and am in charge of transport of that headquarters. On the morning of April 4, 1943, L/Cpl Burgess of this H.Q. asked me if I knew the whereabouts of Captain Smith's vehicle as Captain Smith was inquiring for it. As far as I knew, it was in the vehicle park, or at the Officers Mess so with L/Cpl Burgess, I went to check the vehicle park and found it wasn't in the lines.

I looked back in orders to see who was on guard on the previous night and found that Pte. Sidney was on the gate from 1800 hrs 3 April 43, till 0100 hrs 4 April 43, so I questioned him asking if he had seen the vehicle leave these lines. I reported to Captain Dix that there was a vehicle missing. It was Captain Smith's vehicle, CM 42030974. I also reported that I had checked the guards and been informed that the vehicle had gone the previous night had not returned.

Pte. Oswald, the accused had no work ticket, or authority to take the vehicle out. I have not seen the vehicle since. There is no other vehicle missing or unaccounted for from this H.Q.

I produce absentee reports of C.R.C.A.S.C., H.Q. showing B 85701, Pte. Oswald absent without leave from 1900 hrs, 3 Apr. 43 until 1605 hrs 19 April 43, when he was returned under police escort. The absentee reports are signed by the duty N.C.O's.

I produce Army Form B 252 addressed to 69 Tank Transporter Company R.C.A.S.C., with the following statement of evidence in the case of B 85701, Pte. Oswald A.E., 69 Tank Transporter Company R.C.A.S.C. I quote "
"Sir, At London on the 14 April 43 at about 1330 hrs., I was on duty in Charing Cross Road in company with L/Cpl Herbert B.S. when I had the ocassion to check the a/m soldier. I approached him and asked him for his pass, he felt in his pockets to get his pass, but he obviously wasn't in possession of one, he maintained that he had a pass. He said "Oh I've left it in the Taylors Shop around the corner".
Not being satisfied with this explanation I placed him under close arrest and proceeded to Provost H/Qtrs.
On the journey to H/Qtrs he struck out with his hands striking me and my partner in the ribs, he broke close arrest and ran a considerable distance, and hid himself in Shop Cellar, where he

was re-arrested and escorted to Cdn Provost H/Qtrs. On being searched in the Det. Booking Office he was found to be in possession of Two (2) A.F.B. 295's belonging to Pte. Tooze, M 11294 of 1st Btn Cal High of Can, also MBM parts I, II, III, of Pte. Tooze. At time of arrest he was improperly dressed, wearing F.S. cap under the lapel of his right shoulder and tunic unbuttoned to four buttons.

He was handed over to the N.C.O. i/c of the cells to be detained."

This document is signed at London 14 April 43 by D 91711, Cpl Gervais, A., No 6 Provost Corps, and by L 27870 L/Cpl Herbert, B.C., No 6 Cdn Provost Corps.

Cross-Examined by accused.

Q. At what time Sunday Morning, did you enquire of Pte. Sidneys knowledge concerning the vehicle in question?

A. Roughly about 1100 hrs.

M45332
K.P. Gulliam Cpl

SECOND WITNESS

C 32089 Pte. Sidney, E., H.Q., R.C.A.S.C. 4 Cdn Armoured Division having been duly sworn, states:

While on guard duty at the main entrance to C.H.C.A.S.C., H.Q., area, on 3 April 1943, at approximately 1900 hrs, the accused, Pte. Oswald approached the gate to leave the area driving a Willys light utility car. I can not recall the number. He stopped and I went over and asked for his work ticket. He said he was proceeding to the Officers Mess to have it signed. I let him proceed and he did not return during my tour of duty. At that time I did not know the drivers name, but I knew was attached to this H.Q. from the 69th Tank Transporter Company. He was tall, fair and heavy set. On an identification parade, 20 April, I picked him out. He gave his name as Pte. Oswald. I have not seen the vehicle since 3 April and did not see the accused from 3 April until the identification parade. The accused was alone and there was no passengers in the vehicle, when he left the area. I had just returned from leave. During my leave the unit had moved to a new location and at the old location it was a common practice to proceed to the Officers Mess to have a work ticket signed.

Cross-examined by accused.

Q. On the night of 3 April 1943 at the time you say you saw me, was it still daylight or had darkness fallen?

A. It was still daylight.

Q. Do you know the number of the vehicle that I was supposed to have been driving on the night of 3 April 1943.

A. No I do not recall it.

Q. Can you be positive the vehicle mentioned in the charges is the same vehicle that I was supposed to have been driving on 3 April 1943?

A. No sir, as I haven't seen it since.

Q. How do you know you haven't seen it since you stated you did not know the number of the vehicle.

A. He did not return with it.

Q. Is it a practice to let a complete stranger drive one of the unit vehicles out of the gate.

A. No.

C-32089 Pte. Sidney

THIRD WITNESS

H 65451 L/Cpl Burgess, T.K., H.Q., R.C.A.S.C. 4 Canadian Armoured Division, having been duly sworn, states:

During the day of 3 April 43, I was duty N.C.O. for C.R.C.A.S.C. H.Q. At the 2215 roll call, Pte. Oswald was absent from his quarters. I turned in an absentee report the following morning. I did not see him again until he was brought back here. On the following day, Sunday, 4 April 43, Capt Smith was enquiring as to the whereabouts of his vehicle, so I went out with Cpl Gwilliam, transport Cpl, checked the vehicle park and found the vehicle missing.

As duty NC.C. I had not author ized Pte. Oswald to take the vehicle out of the area.

The accused declined to cross-examine.

H 65451 T. K. Burgess L/Cpl

~~FOURTH WITNESS~~

D 121609, Pte. MacDonald, H.C. H.Q. R.C.A.S.C. 4 Cdn Armoured Division , having been duly sworn, states:

I am D 121609, Pte. MacDonald, storeman in charge of clothing and equipment store of C.R.C.A.S.C. H.Q.

After I was notified that Pte Oswald was absent, his kit was turned in to the stores and checked by me. Upon his return, a second kit bag was received and I checked this off against his M.B.M. 1 Part III. I submit the following list of deficiencies.

ARTICLES	QUANTITY	PRICE £	s	d
Drawers, celular short, prs	1	0	1	6
Drawers, woollen, prs	2	0	7	10
Shirts, angola, drab	1	0	6	10
Shoes, canvas, prs	1	0	6	7
Brass, cleaning	1	0	0	1½
Brushes, clothes	1	0	0	9½
Brushes, hair	1	0	0	9½
Comb, hair	1	0	0	1½
Fork, N.S.	1	0	0	3½
Holdall	1	0	0	6½
Housewife	1	0	1	8
Knife, table	1	0	0	7
Spoon, N.S., dessert	1	0	0	3
Vests, cotton, gymnasium	1	0	1	1½
Bags, ration	1	0	0	1½
Haversack, W.E. Patt 37	1	0	7	9½

ARTICLES	QUANTITY	PRICE £	s	d
Helmet, steel, complete	1	0	8	0½
Straps, shoulder, haversack	2	0	3	0
Outfit, anti-dimming	1	0	0	1
Ointment, anti-gas	1	0	0	11½
Eyeshields, anti-gas	5	0	2	10
Capes, anti-gas	1	0	14	11½
Towels, hand	1	0	0	8½
Brushes, tooth	1	0	0	3
Brushes, shaving	1	0	1	0
Razors, sets	1	0	1	5
Razor blades, pkgs of 5, pkges	1	0	0	2
Tins, mess, rectangular	1	0	2	0
		£ 3	10	6½

(75% of Vocabulary Priced List)

Cross-examined by accused.

Q. By whom was M.B.M. 1 prepared and on what date?

A. I do not know, it was given to me in the orderly room.

Q. On what date was M.B.M. 1 completed?

A. It is signed here - 20 April 1943, and the initials are R.S.J.

D-121609 Macdonald H.C. Pte

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

"No. I have no statement to make."

I certify that due to the exigencies of the service and the cost and loss of time involved, the attendance of the above named witnesses D91711 Cpl Gervais, A., No 6 Cdn Provost Corps, and L 27870 L/Cpl Herbert, B.C., No 6 Cdn Provost Corps, is not in my opinion readily procurable. I certify that the rules of procedure 4 (C), (D), (E), (F), and (G) have been complied with.

Taken down by me in the presence of the accused in the field, this 21st day of April 1943.

J A Willoughby Capt

(J.A. Willoughby) Capt
att C.R.C.A.S.C., H.Q.
4 Cdn Armd Division
Cdn Army Overseas

APPENDIX "H"

Trial of No. B-85701 Pte. Arthur Earnest OSWALD,

69 Tk Trptr Coy. R.C.A.S.C.

att C.R.C.A.S.C. H.Q. 4 Cdn Armd Div.

LIST OF EXHIBITS SUBMITTED BY THE PROSECUTION

1. Army Form B 252, signed at London 14 Apr 43, by D-91711 Cpl. Gervais, A. of the No. 6 Provost Corps.

2. Certificate of Arrest, signed in London on 14th Apr 43, for D.A.P.M. London Area.

3. Two AFB 295s made out in the name of M-11294 Pte. Tooze, of the 1st Btn Cal High of Can.

4. MBM Parts I, II, and III, of Pte. Tooze.

5. Army Form W. 3012A of C.R.C.A.S.C. H.Q. dated 8th, 11th, and 19th Apr 43., extracts.

Dated in the field this 22nd Day of April, 1943.

(D. A. Harper) Captain,
Adjutant, RCASC, 4 Cdn Armd Div.

APPENDIX "H"

Trial of No. B-85701 Pte. Arthur Earnest OSWALD,
69 Tk Trptr Coy. R.C.A.S.C.
att C.R.C.A.S.C. H.Q. 4 Cdn Armd Div.

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1. Army Form B 252, signed at London 14 Apr 43, by D-91711 Cpl. Gervais, A. of the No. 6 Provost Corps.
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4. MBM Parts I, II, and III, of Pte. Tooze.
5. Army Form W. 3012A of C.R.C.A.S.C. H.Q. dated 8th, 11th, and 19th Apr 43., extracts.

Dated in the field this 22nd Day of April, 1943.

(D. A. Harper) Captain,
Adjutant, RCASC, 4 Cdn Armd Div.

EXHIBIT 5.

EXTRACTS FROM C.R.C.A.S.C. H.Q. CASUALTY RETURNS DATED 8th, 11th, 19th April, 1943.

8th April 1943.

"B-85701 Pte. Oswald, A. E. H.Q. RCASC, 4 Cdn Armd Div, att from 69 Cdn Tk Trptr Coy RCASC. A.W.L. wef 1900 hrs, 3 Apr 43."

11th April 43.

"B-85701 Pte. Oswald, A. E., H.Q. RCASC, 4 Cdn Armd Div, att from 69 Cdn Tk Trptr Coy, RCASC. A.W.L. w.e.f. 1900 hrs 3 Apr 43 (2nd Posting) 8th day. Auth: F.R. & I. 43, (1) (a) (vii). (Still absent 1900 hrs 11 Apr 43)."

19 Apr 43.

"B-85701 Pte. Oswald, A. E., H.Q. RCASC, 4 Cdn Armd Div, att 69 Cdn Tk Trptr Coy, RCASC. Ceases A.W.L. on being apprehended in London by No. 6 Coy Cdn Provost Corps. (Close arrest) w.e.f. 1330 hrs. 14 Apr 43. Returned under guard to this H.Q. lines w.e.f. 1605 hrs, 19 Apr 43."

Certified True Extracts:

(D. A. Harper) Captain,
Adjutant, R.C.A.S.C. 4 Cdn Armd Div.

SUPPLEMENTARY MFM 6 compiled from MFM 4 CERTIFIED TRUE COPY

9 Dec 42 No.B85701 Name OSWALD, A.E. Sqn., Battery, or Company Corps RCASC Date of enlistment 16-7-41 G.C. Badges Service or Proficiency Pay M.F.M. 6 A.F.B. 122 500M—11-40 (8025) H.Q. 1772-45-18

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

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
No entries since arrival in ENGLAND - No entries carried forward from previous conduct Sheet									

APPENDIX "C"

Certified Correct [signature] Capt & Adjt
(D.A. Harper)
for Commander, R.C.A.S.C.,
4 Cdn Armd Div.

[signature] Maj

(P.T.O.)

SUPPLEMENTARY MFM 6 compiled from MFM 4 CERTIFIED TRUE COPY

9 Dec 42 No.B85701 Name OSWALD, A.E. Sqn., Battery, or Company Corps RCASC Date of enlistment 16-7-41 G.C. Badges Service or Proficiency Pay M.F.M. 6 A.F.B. 122 500M—11-40 (8025) H.Q. 1772-45-18

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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
No entries since arrival in ENGLAND - No entries carried forward from previous conduct Sheet									

APPENDIX "C"

Certified Correct [signature] Capt & Adjt
(D.A. Harper)
for Commander, R.C.A.S.C.,
4 Cdn Armd Div.

[signature] Maj

(P.T.O.)

APPENDIX "D"

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B-85701	Private	Oswald, Arthur Earnest	69 Cdn. Tk. Tptr Coy att HQ of Comd RCASC 4 Cdn Armd Div

1. The following is a fair and true summary of the entries in the Service and General Conduct Sheet 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
NIL	NIL

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 8 1/2 days in military custody, making a total of 8 1/2 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his M.B.M 1 (Part I) is 23 years 11 months

6. The date of his attestation specified in his M.B.M 1 (Part I) is 16 July 1941

7. The accused is in possession of or entitled to no military decoration, or military reward

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 ~~22nd~~ 26th day of April, 1943

Capt & Adjt,
(D.R. Harper)
for Commander, H.C.A S.C.
4 Cdn Armd Div.

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.

APPENDIX "D"

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B-88701	Private	Oswald, Arthur Earnest	69 Cdn Tk Tptr Coy att HQ of Comd RCASC 4 Cdn Armd Div

1. The following is a fair and true summary of the entries in the Service and General Conduct Sheet 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
NIL	NIL

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 ~~8~~ 12 days in military custody, making a total of ~~8~~ 12 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his M.B.M 1 (Part I) is 23 years 11 months

6. The date of his attestation specified in his M.B.M 1 (Part I) is 16 July 1941

7. The accused is in possession of or entitled to no military decoration, or military reward

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 ~~22nd~~ 24th day of April, 1943

Capt & Adjt,
(D.A. Harper)
for Commander, R.C.A S.C.
4 Cdn Armd Div.

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.

Oswald. R. Pte. D.93679

7 10-0-2

10-0-2

7

7

A

Army Form A 9.

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

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

Proceedings of a District Court-Martial held at Aldershot on the 27th day of February 1940 by order of

Major. Gen A.G.L. McNaughton C.B. C.M.G. D.S.O

Commanding the 1st Canadian Division C.A.S.F.

dated the 23rd day of February 1940

President.

Lieut. Col. E. W. Haldenby 48th Highlanders of Can C.A.S.F.

Members.

Captain G. E Wight No 9 Field Ambulance R.C.A.M.C

Captain C. K. Bleeks No 5 General Hosp R.C.A.M.C.

, ~~Judge Advocate~~

Trial of* D-93679 Pte. Robert Oswald No 9 Field Ambulance R.C.A.M.C. C.A.S.F.

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 avajlable 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 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut Stevenson R H No 9 Field Ambulance R.C.A.M.C. C.A.S.F

Counsel‡ or defending officer† Lieut Sparling D.W. No 9 Field Ambulance R.C.A.M.C. C.A.S.F

At 10.30 o'clock the Trial commences.

The order convening the Court is read, and is marked (P) 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.

1 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.

(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.

P9100. Wt.W34094-1565 10,000. 10/39. K. & H., Ltd. G657-11. Forms A 9-55

B

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

The following officers under instruction are duly sworn.

Major F.A Ford 8th Army Field Regt. R.C.A
Major G.W. Craig 1st Medium Regt R.C.A

Charge-Sheet.

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

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

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.*

Answer. Guilty

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

Answer. Guilty

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

Answer. Guilty

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

Answer Guilty

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

Answer Guilty

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

Answer Guilty

The accused having pleaded Guilty to all charges, 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.

(R) 19.
EWH

Summary of Evidence

In the case of No. D 93679 - Pte Oswald R. No 9 Fld amb. R.C.A.M.C.

1st witness. P.C. Fredrick George Yates - Hants Co. Constabulary, Crookham states:-

"On Friday the 19th of January, 1940, I was making inquiries at Haig Lines, Crookham Camp relative to the Y.M.C.A., Fleet, having been forcibly entered and two thousand cigarettes stolen, Between 11.15 P.M. the 16th and 11.30 A.M the 17th of January. I was also making inquiries respecting several private motor cars which had been taken without the owners consent at Fleet, Crookham and Aldershot. Two cars taken from Fleet had been found abandoned near Haig Lines, also the two from Aldershot and one from Crookham Camp. The cars were taken -

(1) on the 10th January
(2) on the 12th January
(3) on the 13th January
(4) on the 15th January
(5) on the 18th January

} 1940

On Thursday the 18th of January R.H.S. [redacted] at about 5. P.M. I was on duty in plain clothes when I saw a soldier with a green Ford 10 H.P. motor car in Rounton Rd. Crookham, near Haig Lines. He was behaving in a suspicious manner and drove away from me. I took the number of the vehicle which was COR 41 and as full a description of the driver as possible. About five minutes later I received a report from the Aldershot Police that the vehicle had just been stolen from Aldershot. The accused was the person driving the vehicle.

I made a search in the locality and at eight P.M. the same day I found the vehicle abandoned in the private drive

(R)

Re- Summary of Evidence
In the case of no D 93679 Pte Oswald. R.
1st witness - P.C. Yates. (cont'd)

of "Sycamore", aldershot road, Crookham, about 150 yards from Haig Lines. At 12, noon the following day, the 14th of January, whilst continuing inquiries at Crookham camp, it came to my knowledge that a soldier answering the description of the one I had seen with a stolen car the previous day had been selling cigarettes of similar brands to those stolen from the Y.M.C.A. Fleet, at under retail price to soldiers in the 9th Field ambulance, Royal Canadian Army Medical Corps. I made inquiries and at 12.15 P.M. the same day I interviewed Pte. Oswald, the accused, of that unit. I said to him "It has come to my knowledge that you were selling a considerable quantity of cigarettes cheaply to soldiers of this unit yesterday. they are of similar brands to some stolen from the Y.M.C.A at Fleet this week. When did you obtain those you sold?" and cautioned him. He made a long statement to the effect that he had bought them from a man he did not know who had a car in Reading road, Crookham, on Tuesday the 16th January and gave a detailed description of the vehicle and the man. He also implicated Pte. Clarke of the same unit. I left Oswald and told him I should have to make further inquiries and verify his statement. I made further inquiries and at 2 P.M. the same day I again saw Oswald. I said to him "I find that the story you told me respecting how you obtained those cigarettes is untrue. I am not satisfied with your explanation and I am going to detain you whilst I

Summary of Evidence. (2)

In the case of no. D 93679 Pte. Oswald R.

1st witness. P.C. Yates. (cont'd)

make further inquiries." He replied "that is the truth."

I took him to Crookham Police station. When there he said "That statement I made about the cigarettes is not true. I got them from a man on post at Fleet Cross roads last Tuesday evening." I replied "that is a very unsatisfactory explanation." He said "all right - I'll tell you the truth. I stole them." I cautioned him and said "Do you wish to put that into a statement?" He replied "yes, I want to clear it up." I said "you also answer the description of a soldier who has been seen several times in stolen cars in this locality." He at first emphatically denied he was the person. I said "I know you were in a car taken from Aldershot yesterday and I am going to charge you with that offence and you will be put up for identification respecting other cars." He replied "yes, I have been driving round in five or six cars. Driving has a great fascination for me." I mentioned the makes of the cars and the dates on which they were taken also the places. He admitted taking the five with which he is now charged. He then made ~~the~~ a statement which I typed. He read it over and signed it, having been cautioned before the statement was made. I conveyed Oswald to Aldershot Police station where he was cautioned and charged with these offences. He replied "That's right - the last statement I made is the truth."

H. Yates. P.C. 355.

The accused declines to Cross-examine this witness. R.O.

(D)

2nd witness. S-Cpl. Stanford. R.H.S. No. D. 93644. No 9 Fld RCAMC Amb. Crookham

One evening pte. Oswald & pte. Clarke was in my hut, 22. They were selling cigarettes six packages of tens for 1 shilling. They were two packages of woodbines and four of wings.

L/Cpl. Stanford

Q. The accused here asked the witness if he had sold him any cigarettes

A. No, it was pte. Cooke who sold them to me. Oswald and Clarke were with Cooke.

The accused declines to further cross examine.

R. Stanford

The accused reserves his defence. R. Oswald

Taken down by me this 3rd of February, 1940 at Crookham Camp, aldershot in the presence and hearing of the accused. Certified that Rules of Procedure 4 (C) (D) and (E) have been complied with.

Crookham.-
3rd Feb. 1940.

R.H. Stevenson Lieut.
R.C.A.M.C.

Additional summary of Evidence (R)

In the case of no D93679 - Pte. Oswald. R.
no 9 Field Ambulance R.C.A.M.C. C.A.S.F.

3rd witness ~~James Pool Pearson~~ "Kanawha" ~~Kings~~ Road, Fleet.
James Pool Pearson states:-

I am an Estate Agent and reside at "Kanawha" Kings Road, Fleet.

about 9.15 A.M. on the 10th January, 1940 I left my car outside my office which is on the corner of Kings Road & Fleet Road and on going out for it at noon the same day, I found it had gone.

I gave no person permission to take the car and value it at £150-0-0.

4th witness - Harry Johnson "Cora Linn" Rowston Road - church, Crookham.

Signed - JAMES PEARSON.
R. Oswald

Harry Johnson states:-

I am a Bandmaster of the R.A.M.C stationed at Haig Lines, Crookham Camp and I reside at "Cora Linn", Rowston Road, Church Crookham.

At 11.10 A.M. on the 12th January, 1940, I left my car outside the Band Hut at Haig Lines, Crookham. I went into the hut and returned for the car at 12.20 P.M. the same day but found it was missing.

I gave no person permission to remove it and value it at £72-0-0.

5th witness
James William Dockerill
4 Florence Road
Crookham

Signed - HARRY JOHNSON.
R. Oswald.

James William Dockerill states:-

I am a garage proprietor and reside next to the garage in Florence Road, Crookham.

About 10.25 A.M. on the 13th January 1940 I left my car outside the garage whilst I went into the house. I returned within about four minutes and found the car to be missing.

I gave no person permission to remove it and value it at £45-0-0

Signed. J.W. Dockerill.
R. Oswald.

Additional Summary of Evidence (R) 79.
- no 9 Fld. amt R.C.A.M.C. C.A.S.F.
in the case of no D. 93679. Pte Oswald R.
6th witness Herbert Martin, 35 Highfield gardens, aldershot

Herbert Martin states -:

I am a Company Director at 35, Highfield Gardens, aldershot.

At 2.30 P.M. on 15th January 1940 I left my car unattended in Queen's Road, aldershot while I entered a nearby cafe. When I returned at 3.15 P.M. I found that my car had been taken away without my consent.

I made a search in the locality but could not find my car so I reported my loss to the Police. The following day in consequence of what the Police told me I went to Fleet and recovered my car.

Signed H. Martin

7th witness
Joseph Charles Rawdon
Southmead Road, aldershot

R. Oswald

Joseph Charles Rawdon states -:

I am a traveller and am employed by Solomon Brothers, aldershot. I reside at Southmead Road, aldershot. At 4.35 P.M. on the 18th January 1940 I left my car outside the premises of Solomon Brothers Nelson St. aldershot. At 4.45 P.M. the same day I returned to the spot and discovered that my car was missing. I made a search of the immediate vicinity but could find no trace of it. I then reported it to an officer.

Signed - J. C. Rawdon.

R. Oswald.

Taken down by me this 31th of February 1940 at Crookham Camp, aldershot in the presence and hearing of the accused, Certified that rules of Procedure 4 (c) (D) and (E) have been complied with.

R.H. Stevenson Lieut
R.C.A.M.C.

11th Feb. 1940. Crookham C.W. Haldenby Lt Col. President

34.

Not applicable

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 28th day of Feb 1940

R H Stevenson Lieut.
9th Field ambulance
R.C.A.M.C.

31.

(S)

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

No.D-93679, Pte.Oswald,R of the No.9 Field Ambulance,R.C.A.M.C.

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.

†See para. 664, K.R., 1935.

*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.

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	Nil	times.
~~For~~	~~Nil~~	times	Nil	times.
For	Nil	times	Nil	times.
For	Nil	times	Nil	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.~~

708. Wt.44487/2165. 10,000. 2/39. Wy.L.P. Gp.656.
1390. Wt.22156/738. 20,000. 7/39. Wy.L.P. Gp.656. Forms/B296/44.

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 4 ~~days~~. days in Civil Custody,

and ~~27~~ ~~days~~. 37 days in Military Custody.

Total ~~25~~ 41 days.

Of which No days were spent in hospital.

5. The present age of the accused according to his record of service / attestation paper is 19 yrs.

6. The date of his commission / attestation specified in his record of service / attestation paper is 25 Nov 1939

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 ..... years' service,

9. The accused is entitled to reckon ..... 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 [*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,~~	~~xxxxx~~
~~In the rank of~~	~~years,~~	~~xxxxx~~
~~In the rank of~~	~~years,~~	~~xxxxx~~

[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 (A), signed by the president, and annexed to the proceedings.

Wallaceburg Ont 28 Sept 39
President

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.

Not applicable

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 disposing of the charge, or disposing with Trial	Date and place of Trial, or summary award, or of Order disposing 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.*

B.2 3

CHARGE SHEET.

1st Charge.

The accused, No. D-93679, Private Robert Oswald, No. 9 Field Ambulance, R.C.A.M.C., C.A.S.F., a soldier of the Canadian Active Service Force, is charged with:-

While on Active Service, committing a civil offence, that is to say, housebreaking and larceny, contrary to Section 26(1) of the Larceny Act 1916,

in that he, at Fleet, on 17 Jan 40, did break and enter the pavilion of the Y.M.C.A., and did steal therein a quantity of cigarettes, the property of the Y.M.C.A., the said cigarettes being of the value of £5:0:0.

2nd Charge.

The accused, No. D-93679, Private Robert Oswald, No. 9 Field Ambulance, R.C.A.M.C., C.A.S.F., a soldier of the Canadian Active Service Force, is charged with:-

While on Active Service, committing a civil offence, that is to say, taking and driving away a motor vehicle without having either the consent of the owner thereof, or other lawful authority, contrary to Section 28 of the Road Traffic Act 1930,

in that he, at Fleet, on 10 January 1940, unlawfully took and drove away a motor vehicle, Rover 10 h.p. No. COR - 214, the property of James Pool Pearson, without having either the consent of the said James Pool Pearson or other lawful authority.

3rd Charge.

The accused, No. D-93679, Private Robert Oswald, No. 9 Field Ambulance, R.C.A.M.C., C.A.S.F., a soldier of the Canadian Active Service Force, is charged with:-

While on Active Service, committing a civil offence, that is to say, taking and driving away a motor vehicle without having either the consent of the owner thereof or other lawful authority, contrary to Section 28 of the Road Traffic Act 1930,

[redacted]

B.2 - 5.

CHARGE SHEET

Commanding Lieut Col

4th Charge.

AA Section 41

The accused, No. D-93679, Private Robert Oswald, No. 9 Field Ambulance, R.C.A.M.C., C.A.B.F., a soldier of the Canadian Active Service Force, is charged with:-

While on Active Service, committing a civil offence, that is to say, taking and driving away a motor vehicle without having either the consent of the owner thereof, or other lawful authority, contrary to Section 28 of the Road Traffic Act 1930,

in that he, at Crookham, on 13 January 1940, unlawfully took and drove away a motor vehicle, Rover 10 h.p. No. J.J-4642, the property of James William Dockerill, without having either the consent of the said James William Dockerill, or other lawful authority.

5th Charge.

AA Section 41

The accused, No. D-93679, Private Robert Oswald, No. 9 FieldAmbulance, R.C.A.M.C., C.A.B.F., a soldier of the Canadian Active Service Force, is charged with:-

While on Active Service, committing a civil offence, that is to say, taking and driving away a motor vehicle without having either the consent of the owner thereof, or other lawful authority, contrary to Section 28 of the Road Traffic Act 1930,

in that he, at Aldershot, on 15 January 1940, unlawfully took and drove away a motor vehicle, a Daimler black saloon, No. FGF - 708, the property of Herbert Martin, without having either the consent of the said Herbert Martin, or other lawful authority.

6th Charge.

AA Section 41

The accused, No. D-93679, Private Robert Oswald, No. 9 Field Ambulance, R.C.A.M.C., C.A.B.F., a soldier of the Canadian Active Service Force, is charged with:-

While on Active Service, committing a civil offence, that is to say, taking and driving away a motor vehicle without having either the consent of the owner thereof, or other lawful authority, contrary to Section 28 of the Road Traffic Act 1930,

in that he, at Aldershot, on 18 January 1940, unlawfully took and drove away a motor vehicle, Ford 10 h.p. No. CGW - 41, the property of Joseph Charles Rendon, without having either the consent of the said Joseph Charles Rendon, or other lawful authority.

To be tried by district court martial.

Crookham, Aldershot
12 February 1940

C Evil

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.

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.

being duly sworn, is examined by the prosecutor.

The prosecution is closed.

Defence.

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

Answer.

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

Answer.

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?

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.]

Instruction.

† 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*.)

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 D-93679 Pte Robert Oswald 9th Fd Amb. RCAMC is found guilty of all charges

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

Question to the accused. Q Do you wish to make any statement in mitigation of punishment? No but I would like the defending Officer to do so

Answer. A ~~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.]~~

The defending officer was duly sworn and stated in mitigation of punishment —

"The accused wishes to enter pleas in mitigation of his sentence on the following grounds —

1. He is just a youngster and does not realize the seriousness of the offences. He came over to a new Country to surroundings which are not very good at this time 2. He was short of money, and never realizing the seriousness of his offence, he was out to have a joy ride, not intending to harm anyone

3. He wishes the time spent in detention in mitigation

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.

of his sentence

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

Question to the accused.

No.

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 closed for the consideration of the finding.

The Court find that the accused No 893679
Pte Robert Oswald 9th Field Ambulance
R.C.A.M.C. guilty on all charges.

Proceedings on Conviction *before Sentence.*

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

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

Lieut R H Stevenson No 9 Field Amb. 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 Army Form B 196

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked (S), 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 or a departmental order, 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 prisoner should, after the sentence of the Court is read, and the Court must inquire into the nature and amount of that additional punishment.]

Cross-examined by the accused.

Cross-examination refused by the accused.
Questions by the Court after being sworn
Q. What is your real age & date of birth
A. 19 years. 5th Sept 1902

Question to the accused. Do you wish to address the Court? *Answer.* No.

The Court is closed for the consideration of the sentence.

14.

F

Sentence.

Sentence.

The Court sentence the accused D-93679 Pte Robert Oswald No 9th Field Ambulance, R.C.A.M.C to undergo detention for 40 days

40 days Detention.

E W Haldenby
Lieut Col
48th R of C

President.

I confirm the finding and sentence and I hereby suspend the execution of the sentence under the provisions of A.A. Sec. 57 and direct that D.93679 Pte. Robert Oswald be released from custody and be not committed to any detention barracks until further orders.

Signed at H.Q./ 1 Cdn.Div., ALDERSHOT, Hants this 29th day of February, 1940.

A G L McNaughton
(A.G.L. McNaughton), Maj.-Gen.
G.O.C., 1 Cdn.Div.

PROMULGATED and extracts taken at Crookham

this first day of March 1940

H McAlder Lt. Col.
Cmdg No. 9 Fld. Amb. R.C.A.M.C.
C.A.S.F.

APR 12 40 AM

I direct that the sentence above confirmed by me be suspended and be reviewed on the 15th April, 1940.

A G L McNaughton
(A.G.L. McNaughton), Maj.-Gen.
G.O.C., 1 Cdn. Div.
Superior Military Authority.

Aldershot, Hants,
April, 1940.

G.O.C.
1st CDN. DIV.

15

Army Form A 47

(P)

COURTS-MARTIAL

Form of Order for the assembly of a General or District Court Martial.

Divisional ORDERS BY Maj.-Gen. A.G.L. McNaughton, C.B., C.M.G., D.S.O.

Commanding the 1st Canadian Division

(Place and Date) Aldershot 23rd February 1940

The detail of officers as mentioned below will assemble at Court Martial room, No. 1 C.I.S. at 1000 hrs. on the 27th day of February 1940 for the purpose of trying by a district court-martial the accused person [persons] named in the margin [and such other person or persons as may be brought before them].*

D-93679,
Pte. Robert Oswald,
9th Field Ambulance,
RCAMC., CASF.

PRESIDENT.

Lieut.-Col. E.W. Haldenby 48th Highlanders of Canada CASF. is appointed president.†

MEMBERS.

A Captain 9th Field Ambulance RCAMC. CASF.

A Captain 5th Gen. Hospital RCAMC, CASF.

NOTE.—The ' president must be named. The members and the waiting members may be mentioned by name, or the number and ranks and the unit‡ to which they belong may alone be named.

WAITING MEMBERS.

A Captain 9th Field Ambulance, RCAMC CASF

JUDGE-ADVOCATE.

has been [*or where the convening officer has the appointment of a judge-advocate,* is hereby] appointed judge-advocate.

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to HQ. 1st Canadian Division

Signed this 23rd day of February 1940

E.W. Haldenby
Lieut Col 48th H/C

A.G.L. McNaughton
Major.-General
Commanding 1st Canadian Division.

* *Any opinion of the convening officer with respect to the composition of the Court (see Army Act, s. 48 (10) and Rules of Procedure 20 and 21) should be added here; thus, where a Court-Martial is ordered to assemble, composed exclusively of officers of the same regiment of cavalry, or the same brigade of artillery, or the same battalion of infantry, the following should be added:—*

"In the opinion of the convening officer, other officers are not, having due regard to the public service, available," (*or as the case may be*).

† *Add here, in the case of either a General or District Court-Martial where a captain is appointed president and the officer convening the court is not under the rank of field officer,* "In the opinion of the convening officer a field officer is not, having due regard to the public service, available." *Where it is necessary for an officer under the rank of captain to be appointed president of a District Court-Martial, add,* "In the opinion of the convening officer a field officer or captain is not, having due regard to the public service, available." (*See Army Act, s. 48 (9).*)

‡ *The "unit," in the case of Royal Artillery, is a Brigade, where such organisation exists.*

(12497) Wt.35681/1001 10,000 11/39 A.& E.W.Ltd. Gp.698 Forms A47/41

16.

List of Witnesses.

TRIAL OF

For the Prosecution

(1) P.C. F.G. Yates, No. 355, Hants Co. Constabulary, stationed at Crookham.

(2) D-93644 L/Cpl. H. Stanford — 9th Field Ambulance RCAMC. (Crookham Camp) CASF.

(3) Mr. James Tool Pearson, "Kanawha," Kings Road, Fleet.

(4) Mr. Harry Johnson, "Cora Linn" Bounton Road.

(5) Mr. James William Jockerill, Florence Road, Crookham.

(6) Mr. Herbert Martin, 35 Highfield Gardens, Aldershot.

(7) Mr. Joseph Charles Rawdon, Southmead Road, Aldershot.

For the Defence

N I L

17

Q

PHYSICAL EXAMINATION

27 February, 1940.

This is to certify that I have today examined Private Oswald, Robert, No. D-93679, of No. 9 Field Ambulance, R.C.A.M.C., and find him fit to stand trial.

L. Victor Aguirre Lieut. R.C.A.M.C.

E. W. Haedenby Lieut Col 48th of C

President

10-G-9.
10-G-2.
29/CRTS.MAR/1.

Headquarters,
1 Cdn. Div.
ALDERSHOT.

4 Apl 40.

8A

References:- District Court Martial.
D.92668 - Pte. Clarke, N. 9 Fd.Amb.RCAMC.
and - 1 CD/C-2-3. D.93679. Pte Oswald,
R.bt. - 9 Fd. Amb. RCAMC.

1. M.M.L. Chapter 5, Section 97 (f), page 65, is authority for the fact that the confirming officer may suspend the operation of a sentence only if he is a "superior military authority" within the meaning of Section 57A, ss. (9) of the Army Act and only if the sentence is one of penal servitude, imprisonment or detention.

2. 57A ss (5) provides that where a sentence has been suspended the case shall at intervals of not more than three months be reconsidered by a competent military authority.

3. In the case of the Courts Martial of the marginally named men, therefore, the endorsation that should be placed by the G.O.C. (who is now a superior military authority, by virtue of cable No. A.G.466) below the confirmation on the proceedings should be as follows:-

"I direct that the sentence above confirmed by me be suspended and be reviewed on (three months from the date of the sentence.)

Aldershot

Apr 40.

(A.G.L. McNaughton) Major-General.
Superior Military Authority.

(P.J. Montague) Brigadier.
D. J. A. G.

10.O.2.

Encl 7A

MEMORANDUM.

12 Mar 40

A.A. & Q.M.G.
1st Cdn. Div.,
Aldershot.

Reference Your file 1 CD/6-2-3.
D-93679. Pte. OSWALD, Robt.
9 Fd. Amb. R.C.A.M.C.

1. In accordance with our conversation on the 'phone this morning, I am returning you herewith your file for the purpose of amending suspension of sentence and re-promulgation as pointed out.

2. Will you return this file to us here when you have accompl'shed this.

3. I would suggest that in view of what you informed me of the intention of the General officer commanding that suspension of sentence be until the 18th of April, when these men can be brought up again and having regard to their conduct in the meantime, they be dealt with in accordance with the G.O.C's wishes.

(W.G. Kerr) Lt.Colonel.
D.A.A.G. (Courts Martial)
Canadian Military Headquarters.



Encl 6A

1 CD/5-4-2

8 March 40.

A Q

The Senior Officer,
Canadian Military Headquarters,
2, Cockspur Street,
London, S.W. 1.

10/0/2

District Court Martial
D.93679 Pte. OSWALD, Robt.
9 Fd. Amb. R.C.A.M.C.

1. Reference 10-0-2 dated 6th March, 1940 concerning the marginally noted court martial, and pursuant to telephone conversation between D.A.A.G. (C.M.) and S.C. "A" H.Q. 1 Cdn. Div. the proceedings are returned.

(Ernest W. Sansom),
Colonel,
A.A. & Q.M.G., 1 Cdn. Div.

Encl/

Enc 5A

A.A. & Q.M.G.
1st Canadian Division,
ALDERSHOT.

10-0-2

6 Mar. 40.

Re. Your file 1 CD/6-2-3.
D-93679. Pte. OSWALD, Robt.
9 Fd. Amb. R.C.A.M.C.

1. The papers in this Court Martial have reached these Headquarters and have been checked, and we are returning same herewith to you.

2. It is our opinion that the G.O.C. in suspending sentence as he has done, which is tantamount to suspended sentence under the Criminal Code in Canada in Civil Criminal Courts, should have suspended the sentence for a definite time, i.e., he should suspend the execution of the sentence not until further orders, but for a definite time of six months or one year, whichever in his discretion he deems proper. This should be amended and if promulgated the amendment repromulgated.

(W. G. Kerr) Lt.Colonel.
D.A.A.G. (Courts Martial)
Canadian Military Headquarters

Encl A

1 CD/6-2-3

2nd March 40.

The Senior Officer,
Canadian Military Headquarters,
2, Cockspur Street,
London, S.W. 1

10/0/2

District Court Martial -
D-93679 Pte. OSWALD, Robt.
9 Fd. Amb. R.C.A.M.C.

1. The Proceedings of the marginally noted Court Martial are enclosed herewith.

2. It will be noted that the Proceedings have been confirmed and promulgated and that the sentence has been suspended.

(Ernest W. Sansom),
Colonel,
A.A. & Q.M.G., 1 Cdn. Div.

Encls/

10.0-2.

Enc 3A

19th February, 1940.

MEMORANDUM.

A.A. & Q.M.G.
1 Canadian Division,
ALDERSHOT.

Your officewas enquiring as to whether or not exhibits should be filed with the President of the Courts Martial at the same time that the charge sheets and summary of evidence are filed. I do not believe so.See.R.P. 22. I believe that these exhibits should be produced at the trial in due course and proved according to rules of evidence. The purpose of sending the summary of evidence is, of course, so that the President may know some of the particulars of the charge, etc.

(W. G. Kerr) Lt.-Colonel.
For Senior Officer.
Canadian Military Headquarters.

Exc 2.A

10-0-2.

MEMORANDUM.

19th February, 1940.

A.A. & Q.M.G.
1 Canadian Division,
ALDERSHOT.

Reference - Your file 1 CD/5-4-2.
No. D-93697 - Pte. OSWALD, Robert.

In this matter we have your letter of the 14th instant with enclosures as therein stated.

I have been able to check the charges 2, 3, 4, 5 and 6, but I have not available a copy of the Larceny Act 1916. Charges 2, 3, 4, 5 and 6, are in accordance with Section 26 of the Road Traffic Act, 1930. You should make certain that the wording of Charge No. 1 is in accordance with 26 (1) of the Larceny Act. You could probably find this act in possession of the local police, as apparently they assisted in laying the charges.

We return you herewith the charge sheets in duplicate, and statement of witnesses.

In regard to the statement of the accused concerning his age, that is a subject, of course, for a further charge for false attestation under Army Act Section 33, sub-section 4, as amended January, 1931. However, in view of the seriousness of the other offences, I do not think you need prosecute for that offence.

It will be in order to have the District Courts Martial in this matter convened.

(P. J. Montague) Colonel.
D. J. A. G.
Canadian Military Headquarters.

Encs.

40-152

Pte Otis H.

SCHEDULE.

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

Accused: E-57624 Pte Henri, OTIS 23 C SEC

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.)

NOT

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.(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 twenty eight (28) days and the forfeiture under Established of pay under the Regs of £1-9-6 Cost of return.

(Sgd) ..... Judge Advocate, if any. 29 Jan 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.)

JGS

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) JGS

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

Date 31 Jan. 45 (Sgd) J.E. Sager Brigadier Commanding "F" Gp. C.R.U. Confirming Officer.

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

Accused.	Date.	Signature of Offr.
E.57624 Pte. Otis H.	Part II No 6 1 Feb 45 & 2 Feb 45.	George E Burrows Major OC No 23 C SEC

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 169

4A-152

CHARGE (on form of APA30) 45-P & S/1008 (40-6)

4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brigadier J.E. Sager Comd "F" Gp, CRU dated 27 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.
E-57624	Pte	Henri	Otis	23 Cdn Spec Emp Coy

PROCEEDINGS REVIEWED 14 Feb 45 Lt. Brendan Lt-Col

REVIEWING OFFICER 2 MD DISTRICT CANADA

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England 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 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) ~~of~~ 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 1025 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 L. Bragg as 23 C SEC interpreter? Ans No

The Interpreter is sworn.(1) Do you object to Capt H Bandrette 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 Nil (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	Major	E.M. Nussey ED KC	MD 5 CRA
Member	Capt	M.E. Gelber	1 C S Regt
Member	Lieut	L. Adamatis	1 C G Regt
~~Judge Advocate~~			
Prosecutor	Lieut	R.J. Pratt	23 C SEC
Defending Offr	Lieut	R.E. Dionne	3 C G P C

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans ..... (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 adjournement 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 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 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(s), 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 No (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 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 27(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 41, 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) (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 Nothing to say 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(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 355 or AFE 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 Nothing more Sir (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, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(3), 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.

CHARGE SHEET

The accused No. E 57624 Private HENRI OTIS, on strength of the 23 Canadian Special Employment Company, a soldier of the Canadian Army Overseas, is charged with, when on active service:

Army Act Sec 15(1)

ABSENTING HIMSELF WITHOUT LEAVE

in that he in the field, absented himself without leave from 1200 hrs 29 Dec 44 until apprehended by the Civil Police at Leeds at 0900 hrs 17 Jan 45

Costs of apprehension £1/9/8

Total time absent 18 days 21 hours.

25 Jan 45
Louisberg Brks.
Bordon, Hants.

George R. Burrows
Major George R. Burrows, E.D.
Officer Commanding,
23 Cdn Spec Emp Coy

To be Tried by Field General Court Martial.

Bordon, Hants
27 Jan 45

J. E. Sager
(J. E. SAGER) Brigadier
Comd "F" Gp, CRU

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.
E-57624	Pte		Henri	Otis	23 Cdn Spec Emp 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*) 27 Jan 45 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial". Jas Jas Jas

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)~~ Jas Jas

(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. Jas

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.~~ Jas Jas

(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.~~ Jas

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

PRESIDENT.

Major	E. M. Miller, E.D.	HQ CRU
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

A Captain	from and to be detailed by OC	1 CSRU
A Lieutenant	from and to be detailed by OC	1 CGRU
(Rank.)	(Named or detailed. RP 106.)	(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.)

J. E. Sager (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

(J. E. SAGER) Brigadier
Commanding "F" Gp, CRU
Convening Officer.

Date 27 Jan 45

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

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

My

25 CDN SPECIAL EMPLOYMENT COY

I certify that I have this morning examined No. .....

Rank. H.47624 Name. PTE OTIS H. of 23 (unit) C.S.E.C.

and in my opinion he is Fit to undergo trial by Court-Martial.

Sgd. A. McLEOD Capt.
(unit)
Medical Officer, ACA/C.
24.C.S.E.C.

Station: FIELD

Date: 29 JAN 45

W.

29 Jan 44

Plea of Mitigation

E-57624 Pte OTIS H.

President and Members of the Court,

This is the story of a young man who set out for Leeds, seeking adventure. The accused, a French Canadian is not very fluent in English. Nevertheless he got along alright. The hospitality of the Yorkshire people impressed him so much, that in his candid deductions he came to the conclusion that he was not committing a serious offence by going absent, and that the army would not miss him very much. All went well for 18 days, what a great life.....to live and let live. This is where the Red Caps came in. Gentlemen to-day, the accused is facing this court on a charge of being absent 18 days 21 hrs.

The accused Gentlemen is not Court-Martial material. I would suggest that his ignorance of the seriousness of the offence is more resposible than any other reason. The accused record of service shows what kind of a man he is. His MFM-6 shows but four entries. This gentlemen is a good record for any soldier, in the army. Pte Otis fought in Italy with the famous R 22 nd Regt. He gave his best for his Country and his Regt. Through no fault of his he lost part of his hearing in the Italian Theatre of Operations. His service abroad and his conduct while in action was of the highest standard. The accused admits his guilt; he also realizes his mistakes and is willing to take the punishment of this court. I would like to suggest that he be punished but that his period of confinement should be as short as possible. This soldier is anxious to get back to work to do the job that the army wants him to do. The shortage of man power at the present time is very acute. We cannot afford to lose the services of a good soldier. Pte. Otis is badly needed in his unit and he should be returned at the earliest possible moment.

R.F. Dionne Lieut

R.F.Dionne Lieut

SUMMARY OF EVIDENCE

in the case of

E 57624 Private Otis H., on strength of 23 Canadian Special Employment Company, 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. C 30920 Sgt. Brazeau R., on strength of the 23 C.S.E.C., a soldier of the Canadian Army Overseas, having been duly sworn states:

I submit Certified True Copy of D.O. No. 1 Pt. II d/4 Jan 45 relating to the accused. (Marked Exhibit A)
I also submit Certified True Copy of D.O. No. 5 Pt. II relating to the accused. (Marked Exhibit B)
I also present A.F. CMHQ 100:55 Expense Voucher purporting to be signed by Lieut. J.A. Thomson, Admin. Officer - D.P.W.'s Branch, C.M.H.Q. re. the expenses of returning the accused to his unit. (Marked Exhibit C)

R. Brazeau
C 30920 Sgt. Brazeau R.

The accused declines to cross-examine the witness.

The accused was cautioned as follows:

"Desirez-vous faire une declararion ou rendre temoignage sous serment? Vous n'etes pas oblige de dire quoi que ce soit, ni rendre temoignage a moins que vous ne le desirez, mais tout ce que vous direz ou toute deposition que vous ferez vera pris par ecrit et pourra servir de preuve.

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

E 57624 Pte. Otis H.

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

Lieut. R.J. Pratt.,
23 C.S.E.C.

25 Jan 45
Louisberg Brks.,
Bordon, Hants.

Last Order No 30 d/28 Dec 44

29 CDN SPECIAL EMPLOYMENT COY
PART II ORDERS
ISSUED BY
MAJOR GEORGE R. BURROWS OFFICER COMMANDING

This Order No 1 d/4 Jan 45

"P.E."
"A"

OFFICERS

1. HOSPITAL

Amendment: Pt II No 30 para 1 d/28 Dec 44, insofar as it refers to the u/m officer is amended to read: "wef 28 Dec 44"
Lieut Arthur William Emmett.

2. LEAVE OF ABSENCE

Amendment: Pt II No 15 para 1 (P.E.) d/10 Sep 44, insofar as it refers to the u/m officer is amended to read: "from 29 Aug 44 till 6 Sep 44"
Lieut Arthur William Emmett

3. STRENGTH DECREASE

Amendment: Pt II No 30 para 2 d/28 Dec 44 (P.E.) insofar as it refers to the u/m officer is amended to read: " wef 28 Dec 44"
Lieut Arthur William Emmett

"B"

OTHER RANKS

4. STRENGTH INCREASE

TOS from 22 Cdn Spec Emp Coy wef 31 Dec 44 (Auth HQCSEG/6-2/Post) d/28 Dec 44:
M.2947 Cpl Rodgers D.R.

5. ATTACHMENTS

Att to 1 Cdn Spec Salv Det RCOC wef 4 Jan 45:
L.84044 Sgt Gomez A.F.

6. HOSPITAL

Discharged from 1 C.M.C. wef 4 Jan 45:
R.50632 CPL Demille H.R.

7. LEAVE OF ABSENCE

a) Granted 7 days P.L. plus 48 hrs with money allowance in lieu of rations wef 29 Dec 44 till 7 Jan 45:
C.12410 Sgt Parent J.
R.131137 L/Cpl McKintosh W.J.

b) Granted 14 days P.L. with money allowance in lieu of rations from 29 Dec 44 till 12 Jan 45:
F.96477 Cpl Larkin R.T.

8. ABSENCE WITHOUT LEAVE

M.16632 A/L/Cpl Wilkins C.W. Absent since 1200 hrs 29 Dec 44; Still absent 1200 hrs 1 Jan 45: 3rd day

9. CHANGE OF ADDRESS (N-of-K)

Change of address N-of-K from: Mrs A.F. Gomez (wife) Gen Del. Bulyea, Sask.
to: Mrs A.F. Gomez (wife) 51, Dufferin St. West Weston, Ont. Can.
L.84044 Sgt Gomez A.F.

10. HONOURS AND AWARDS

Awarded the 1939-45 Star wef 4 Jan 45
M.7104 [illegible] Norman C.W.

P.T.O.

Certified True Copy (Exhibit "A")

HOLDING STRENGTH

"A"

OFFICERS

N I L

"B"

OTHER RANKS

1. STRENGTH INCREASE

a) TOS from 22 Cdn Spec Emp Coy wef 31 Dec 44 (Auth HQCSEG 6-2/Post) d/28 Dec 44:

G.17323	Pte	Carrier	A.L.	L.106660	Pte	Horbay	B.
G.80181	Pte	Cota	H.	C.102514	Pte	Lariviere	A.
C.5038	Gnr	Culligan	A.C.	E.101827	Pte	Larocque	P.
B.103164	Pte	Dean	A.	B.84543	Pte	MacDonald	H.J.
D.66176	Pte	Desbiens	N.O.	A.11426	Pte	Mero	J.J.
D.124784	Pte	Doucet	G.	D.123293	Pte	Morin	L.
M.103327	Pte	Dunits	M.	M.133368	Pte	Paskaluk	A.
B.6445	Pte	Dunn	R.E.	D.139364	Pte	Perron	J.J.
D.139173	Pte	Emard	J.E.	C.90112	Pte	Reid	C.E.
D.74345	Pte	Flynn	E.L.	L.19575	Pte	Robertson	R.A.
K.62804	Pte	Gagne	R.	D.61913	Pte	Ste-Marie	R.
F.45328	Pte	Grant	M.				
H.102902	Pte	Graves	G.				

b) TOS from Pnr & Spec Emp "Y 2 List" on return from Desertion wef 1655 hrs 3 Jan 45:

B.88748	Pte	Blake	C.

2. ATTACHMENTS

a) Att to 1 Cdn Spec Salv Det HCOC wef 2 Jan 45:

B.41298	Pte	Kingsmill	R.E.

b) Att to 1 Cdn Spec Salv Det HCOC wef 4 Jan 45:

D.71789	Pte	Chapman	A.E.	B.86001	Pte	Hayes	J.J.
K.51844	Pte	Coe	R.C.	G.87581	Pte	Herbert	E.
D.81202	Pte	Denver	R.C.	E.4354	Pte	Lapointe	V.
D.76567	Pte	Donnelly	J.	C.972	Pte	Sparks	H.C.
H.103327	Pte	Dunits	M.	D.3566	Pte	Truby	S.
B.6445	Pte	Dunn	R.E.	D.126868	Pte	Verville	A.
C.120324	Pte	Hanes	C.N.				

c) Att to 1 CASCHU for r & q and to CHU Postal Sec. for duty wef dates shown:

M.25911	Spr	Bean	J.	29 Dec 44
G.49903	Pte	Doyle	G.L.	30 Dec 44
H.3627	Gnr	Ponich	C.	29 Dec 44
K.46394	Pte	Potts	R.T.	30 Dec 44
B.57839	Pte	Secour	M.	29 Dec 44

d) CTHA to 1 Cdn Spec Salv. Det HCOC wef dates shown:

M.10548	Pte	Cook	L.D.	28 Dec 44
A.97575	Pte	Durand	T.L.	3 Jan 45
B.65686	Pte	McKinley	W.K.	2 Jan 45
F.55816	Pte	Nurse	H.L.	3 Jan 45
M.56603	Pte	Slomke	D.O.	4 Jan 45
D.63619	Pte	St-Charles	A.J.	3 Jan 45

e) CTHA from 1 CASCHU for r & q and to CHU Postal Section for duty wef dates sh

F.29729	Pte	Baird	K.G.	27 Dec 44
F.95039	Pte	Flanagan	T.H.	27 Dec 44
L.41233	Pte	Fortin	E.	27 Dec 44
A.19390	Pte	Haney	J.O.	18 Dec 44
C.56132	Signn	Horsfield	R.B.	2 Jan 45
B.41298	Pte	Kingsmill	R.E.	20 Dec 44

P.T.O.

3. HOSPITAL

a) Admitted to hospital shown wef date shown:

E.5718	Pte	Cote	R.	1 Cdn Spec Hosp	2 Jan 45
D.71129	Pte	Martin	L.C.P.	22 Cdn Gen Hosp	28 Dec 44
E.14313	Pte	Ouellette	T.	1 Cdn Spec Hosp	2 Jan 45

b) Transferred from 22 Cdn Gen Hosp to 4 Conv. Depot wef 29 Dec 44:

F.91522	Spr	Moore	E.

c) Discharged from 1 C.M.C. wef 31 Dec 44:

B.132883	Pte	Blue	W.H.

4. LEAVE OF ABSENCE

a) Granted 7 days P.L. plus 48 hrs with money allowance in lieu of rations wef 29 Dec 44 till 7 Jan 45:

F.29729	Pte	Baird	K.G.	D.138738	Pte	Hannaway	T.J.
D.62218	Pte	Belair	R.	D.56103	Pte	Lavigne	E.
B.68190	Pte	Hint	A.S.	B.80148	Pte	Lefebvre	R.H.
D.72201	Pte	Braley	L.R.C.	B.27537	Spr	Medhurst	R.T.
C.20611	Pte	Carr	P.	C.30716	Pte	Quesnel	W.
E.14036	Pte	Caron	G.	C.52435	Spr	Sudds	R.V.
L.104257	Pte	Coderre	R.	C.102787	Bfn	Swayne	B.D.
L.64550	Tpr	Dufour	H.	B.9595	Gnr	Trudel	A.
B.114942	Rfmn	Eberhart	B.J.	B.149539	Pte	Vanier	A.J.
F.95039	Pte	Flanagan	T.H.	K.57645	Pte	Veitch	A.J.
L.41233	Spr	Fortin	E.	B.70287	Pte	Wallace	GP[illegible]
D.123040	Pte	Gordon	B.	B.31476	Pte	Warren	D.R.
C.5235	Pte	Gorgerat	J.T.				

b) Granted 7 days P.L. plus 48 hrs with money allowance in lieu of rations wef 3 Jan 45 till 12 Jan 45:

E.11038	Pte	Brulotte	G.G.

5. ABSENCE WITHOUT LEAVE

a) Absent since 1200 hrs 24 Dec 44 ; still absent 1200 hrs 1 Jan 45: 8th day

G.22112	Pte	Martin	H.C.

b) Absent since 1200 hrs 29 Dec 44; still absent 1200 hrs 1 Jan 45: 3rd day

E.57624	Pte	Otis	H.

c) Returned from AWL at 1600 hrs 2 Jan 45: absent since 1800 hrs 16 Dec 44: (Absent: 16 days 22 hrs)

A.102896	Pte	McKinley	R.H.

d) Returned from Desertion wef 1635 hrs 3 Jan 45; absent since 0800 hrs 30 Oct 44 (Absent: 65 days 8 hrs 55 min)

B.38748	Pte	Blake	C.

6. RATES OF PAY

a) Granted a daily regimental rate of pay of $1.40 wef date shown, having completed 4 months' service with efficiency and good conduct (Auth G.O. 88/43)

K.75859	Pte	Staley	D.S.	7 Oct 44

b) Granted a daily regimental rate of pay of $1.50 wef date shown, having completed 6 months' service with efficiency and good conduct (Auth G.O. 88/43)

G.1572	Pte	Arseneault	S.	8 Apr 44
K.75359	Pte	Staley	D.S.	7 Dec 44

7. PUNISHMENTS

a) On 29 Dec 44, awarded 7 days C.B. for an offence under Sec 15 (1) A.A., AWL from 0800 hrs 26 Dec 44 till 1615 hrs 26 Dec 44 (Absent: 8 hrs 15 min) Forf 1 days' pay under FR&I 149 (1) (a)

C.36132	Sigmn	Horsfield	J.B.

P.T.O.

PUNISHMENTS (CONT'D)

b) On 29 Dec 44, awarded 20 days F.P., 20 days forf of pay under FR&I 149 (1) (b) for an offence under Sec 40, A.A. Time spent in custody awaiting disposal: 8 days.
Forf 20 days pay under FR&I 149 (1) (b)
Forf 8 days pay under FR&I 149 (1) (c)
Total forf of 28 days pay.
E.29150 Pte Raban D.

c) On 29 Dec 44; admonished for an offence under A.A. Sec 15 (1), AWL from 0900 hrs 26 Dec 44 till 2000 hrs 26 Dec 44 (Absent: 12 hrs).
Forf of 1 days' pay under FR&I 149 (1) (a)
K.50387 Pte Calvert T.S.

f) On 30 Dec 44, admonished for an offence under Sec 15 (1) A.A., AWL from 2245 hrs 25 Dec 44 till 1700 hrs 26 Dec 44 (Absent: 18 hrs 15 min)
Forf 1 days' pay under FR&I 149 (1) (a)
B.46344 Pte Murray T.

g) On 30 Dec 44, admonished for an offence under Sec 15 (1) A.A., AWL from 2245 hrs 25 Dec 44 till 1445 hrs 26 Dec 44 (Absent: 16 hrs)
Forf of 1 days' pay under FR&I 149 (1) (a)
B.134414 Pte Linklater L.

h) On 30 Dec 44, awarded 4 days C.B. for an offence under Sec 15 (1) A.A., AWL from 2245 hrs 25 Dec 44 till 1445 hrs 26 Dec 44 (Absent: 16 hrs)
Forf 1 days' pay under FR&I 149 (1) (a)
B.85001 Pte Hayes J.J.

i) On 30 Dec 44, admonished for an offence under Sec 15 (1) A.A., AWL from 2245 hrs 25 Dec 44 till 1700 hrs 26 Dec 44 (Absent: 18 hrs 15 min)
Forf of 1 days' pay under FR&I 149 (1) (a)
D.36313 Pte Miller J.

j) On 30 Dec 44, awarded 7 days C.B. for an offence under Sec 15 (1) A.A., AWL from 2245 hrs 25 Dec 44 till 1700 hrs 26 Dec 44 (Absent: 18 hrs 15 min)
Forf of 1 days' pay under FR&I 149 (1) (a)
C.5432 Pte Kennedy L.

k) On 2 Jan 45, awarded 4 days F.P., 4 days forf of pay under FR&I 149 (1) (b) for an offence under Sec 15 (1) A.A., AWL from 1800 hrs 29 Dec 44 till 1800 hrs 1 Jan 45 (Absent: 3 days)
Forf 3 days pay under FR&I 149 (1) (a)
Forf 4 days pay under FR&I 149 (1) (b)
Total forf of 7 days pay.
F.60457 Pte Parker L.W.

l) On 2 Jan 45, awarded 7 days F.P., 7 days forf of pay under FR&I 149 (1) (b), for an offence under Sec 15 (1) A.A. , AWL from 0600 hrs 27 Dec 44 till 0840 hrs 2 Jan 45 (Absent: 6 days 2 hrs 40 min)
Forf of 7 days pay under FR&I 149 (1) (a)
Forf of 7 days pay under FR&I 149 (1) (b)
Total forf of 14 days pay.
B.65636 Pte McKinley R.W.

m) On 3 Jan 45, tried by a F.G.C.M.
Charge: Sec 15 (1) A.A.- AWL from 1600 hrs 10 Nov 44 till apprehended by Civil Police at Doncaster at 0415 hrs 23 Dec 44. (Absent: 22 days 12 hrs 15 min)
Finding: Guilty.
Sentence: 9 months Detention and to be put under stoppages of pay until he has made good the sum of £2-7-9, costs of apprehention.
Confirmation: Findings and sentence confirmed by Comd (Brig J.B. Sarer) "F" Gp CMU on 4 Jan 45.
Close arrest: In close arrest from 0415 hrs 23 Dec 44 till 0001 hr 3 Jan 45 (10 days 4 hrs 14 min)
Forf 23 days pay under FR&I 149 (1) (a)
Forf 270 days pay under FR&I 149 (1) (b)
Forf 11 days pay under FR&I 149 (1) (c)
Total forf of 304 days pay plus cost of apprehention: £2-7-9.
B.51795 Pte Jarvis R.T.

P.T.O.

PUNISHMENTS (CONT'D)

n) On 3 Jan 45, awarded 28 days F.P., 28 days forf of pay under FR&I 149 (1) (b) for an offence under Sec 15 (1) A.A., A&L whilst a defaulter from 1800 hrs 16 Dec 44 till 1600 hrs 2 Jan 45 (Absent: 16 days 22 hrs)
Forf17 days pay under FR&I 149 (1) (a)
Forf 28 days pay under FR&I 149 (1) (b)
Total forf of 45 days pay.
A.102896 Pte McKinley R.H.

o) On 3 Jan 45, awarded a forf of 5 days pay under FR&I 149 (2) for an offence under Sec 15 (1) A.A., A&L from 2359 hrs 1 Jan 45 till 2030 hrs 2 Jan 45, (Absent: 20 hrs 31 min)
Forf 1 days' pay under FR&I 149 (1) (a)
Forf 5 days pay under FR&I 149 (2)
Total forf of 6 days pay.
D.56735 Pte Paradis N.

p) On 3 Jan 45, awarded a forf of 5 days pay under FR&I 149 (2) for an offence under Sec 15 (1) A.A., A&L from 2359 hrs 1 Jan 45 till 2030 hrs 2 Jan 45, (Absent: 20 hrs 31 min)
Forf of 1 days' pay under FR&I 149 (1) (a)
Forf of 5 days pay under FR&I 149 (2)
Total forf of 6 days pay.
D.53319 Pte St-Charles A.

q) On 3 Jan 45, awarded a forf of 5 days pay under FR&I 149 (2) for an offence under Sec 15 (1) A.A., A&L from 2359 hrs 1 Jan 45 till 1530 hrs 2 Jan 45 (Absent: 15 hrs 31 min)
Forf of 1 days' pay under FR&I 149 (1) (a)
Forf of 5 days pay under FR&I 149 (2)
Total forf of 6 days pay.
F.55416 Pte Hurse W.M.

r) On 4 Jan 45, admonished for an offence under Sec 15 (1) A.A., A&L from 2359 hrs 1 Jan 45 till 0900 hrs 3 Jan 45 (Absent: 1 day 9 hrs 1 min)
Total forf of 2 days pay under FR&I 149 (1) (a)
B.113973 Pte Garrett A.F.

s) On 4 Jan 45, awarded 7 days C.B. for an offence under Sec 15 (1) A.A., A&L from 2359 hrs 2 Jan 45 till 0030 hrs 4 Jan 45 (Absent: 1 day 31 min)
Total forf of 2 days pay under FR&I 149 (1) (a)
B.82460 Pte Powney W.

t) On 4 Jan 45, awarded 7 days F.P., 7 days forf of pay under FR&I 149 (1) (b) for an offence under Sec 15 (1) A.A., A&L from 2359 hrs 1 Jan 45 till 0900 hrs 3 Jan 45 (Absent: 1 day 9 hrs 1 min)
Forf 2 days pay under FR&I 149 (1) (a)
Forf 7 days pay under FR&I 149 (1) (b)
Total forf of 9 days pay.
B.40855 Pte Blackstock C.

u) On 4 Jan 45, awarded 7 days F.P., 7 days forf of pay under FR&I 149 (1) (b) for an offence under Sec 15 (1) A.A., A&L from 0300 hrs 1 Jan 45 till 1305 hrs 1 Jan 45 (Absent: 10 hrs 5 min)
Time spent in close arrest awaiting disposal: 2 days.
Forf of 1 days' pay under FR&I 149 (1) (a)
Forf of 7 days pay under FR&I 149 (1) (b)
Forf of 2 days pay under FR&I 149 (1) (c)
Total forf of 10 days pay.
M.106786 Pte McGillis J.

P.T.O.

STRENGTH DECREASE

a) SOS to 22 Cdn Spec Emp Coy wef 31 Dec 44 (Auth HQCSEC/6-2/Post) d/28 Dec 44.
B.133363 Pte Blue W.R.

b) SOS to Pnr & Spec.Emp "Y 3 List" on admission to hospital shown wef date shown:

E.5718	Pte	Cote	R.	1 Cdn Spec Hosp	2 Jan 45
D.71129	Pte	Martin	L.C.P.	22 Cdn Gen Hosp	23 Dec 44
E.14313	Pte	Ouellette	T.	1 Cdn Spec Hosp	2 Jan 45

/MT

(George W. Burrows, E.D.) Major
Officer Commanding,
25 Cdn Spec Emp Coy.

Last Order
No.4
D/19 Jan 45

CDN SPECIAL EMPLOYMENT COY
PART II ORDERS
ISSUED BY

This Order
No.5
d/27 Jan 45

MAJOR GEORGE R. BURROWS, E.D. OFFICER COMMANDING

P.E.

"A"

OFFICERS

N I L

"B"

OTHER RANKS

N I L

HOLDING STRENGTH

"A"

OFFICERS

N I L

"B"

OTHER RANKS

ABSENT WITHOUT LEAVE

AWL from 1200 hrs, 29 Dec 44 until apprehended by the Civil Police at LEEDS at 0900 hrs, 17 Jan 45.

E.57624 Pte OTES, H.

(George R. Burrows, E.D.) Major
Officer Commanding,
23 Cdn Spec Emp Coy

"Exhibit B"

CERTIFIED TRUE COPY

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

Reg No. FS7264 Rank Pte Name Otis, H Unit 23 Spec. Emp. Coy

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

Date	Particulars (1/3 portion)	Amount		
23 Jan 45	Escorts return fare from LONDON To Leeds		19	0
	Prisoners single fare to LONDON From Leeds	own ticket		
	Prisoners fare from to			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares		10	8
	Total £	1	9	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 BR.
C. M. H. Q. Capt

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

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

(Exhibit "C")

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 57624	Pte	Otis Henri	23 C.S.E.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, 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 Insubordination	AA Sec 8 (2)	1	times.
For A.W.L.	AA Sec 15 (1)	3	times.
For	AA Sec 40	1	times.
For			times.

Date of first entry in Field Conduct Sheet 21 Oct 43

Date of last entry in Field Conduct Sheet 27 Sept 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~~

~~beginning on the day of~~

4. The accused has been awaiting trial on the present charges for #0 days in civil custody; and for #12 days in military custody, *i.e.* 0 days in open arrest, #12 days in close arrest; of which 0 days were spent in hospital.

5. The present age of the accused is 25 yrs 36 days

6. The date of his attestation ~~calling up for military service~~ 10 Feb 42

7. The service which the accused is allowed to reckon is 2 yrs. 343 days

8. The accused is in possession of‡ C.V.S.M. 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 Pvt

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.*

(*28072) Wt.28721/3701 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.

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 29th day of January 1945

L/Pte

No. B.57624 Name OTIS H. Sqn, Battery, or Company — Corps C.I.C. Date of enlistment 10.2.42 Badges — Service or Proficiency Pay — 3/17 MFM 6 (AFB 122) 40/PAS/136 (5413)

Date of last entry in Company Conduct Sheet nil — No. and date of last drunk nil — Period not reckoning towards freedom from extra fine nil — 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
Field	21.10.43	L/CPL		AA.8 (2) using insubordinate language towards a superior Officer	CSM.Milville	reverts to Pte	26.10.43		
Field	24.6.44	Pte		AA.15 (1) AWL 1 day, 25 Mins.	CPL.Forget	10 days C.B. 8 days pay	26.6.44		2 days pay
Field	15.7.44	Pte		AA. 40 ---------- AA.15 (1) AWL 4 Hrs, 20 Mins.	LT. Acland	7 days C.B. 14 days F.P. 14 days pay	18.7.44		
Field	27.9.44	Pte		AA.15 (1) AWL 8 Days, 10 Hrs. 20 Mins. cost of App. £1-11s-3d	Doc.	21 days F.P. 21 days pay	30.10.44		9 days pay

(PTO)

CERTIFIED TRUE COPY OF M.F.M.4 IN MY POSSESSION (25.1.45)

STATEMENT BY THE ACCUSED.

I certify that I have received free of charge a copy of the Summary of Evidence, charge sheet, list of witnesses, list of Exhibits.

I desire an officer to defend me.

.....[signature].....

O.C.
23 C.S.E.C.

25 Jan. 45

Sir:

With reference to my pending trial by Field General Court Martial.

I respectfully request that an officer be assigned to act as my defending officer.

If is available may he be assigned for this purpose.

.....[signature].....

LIST OF WITNESSES

FOR THE PROSECUTION

1. C 30920 Sgt. Brazeau R.

FOR THE DEFENCE.

NIL

LIST OF EXHIBITS.

FOR THE PROSECUTION.

EXHIBIT "A"	Certified True Copy of DO NO. 1 Pt II D/4Jan 45.
Exhibit "B"	Certified True Copy of DO No. 5 Pt II d/27 Jan 45.
Exhibit "C"	A.F., C[illegible]R 500:55 Expense Voucher.

34 K

REGIMENTAL DOCUMENTS

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

NAME Pte O'TOOLE, A.R. ..... 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)	DISCHARGE
	DENTAL HISTORY SHEET	DATE
	MEDICAL REPORT OR CASE HISTORY SHEET	REASON
	MEDICAL EXAMINATION ON LEAVING THE SERVICE	AUTHORITY
	TRANSFER CLOTHING STATEMENT	
	LAST PAY CERTIFICATE (M.F.D.930A)	
	PROCEEDINGS ON DISCHARGE	DESERTION
	PROCEEDINGS COURT OF ENQUIRY	DATE
	DECLARATIONS COURT OF ENQUIRY	AUTHORITY
	PAY SHEETS	
	CARDS	
	SUNDRY	

M.F.W.3400

34 K

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 eleventh day of July, 1942.

Whereas it appears to me, the undersigned, an officer in Command of 5 Cnd Support Group, 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.~~ } 10 Sth

* 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—~~ } 10 Sth

PROCEEDINGS REVIEWED.

K.G. Lunden Lieut

25 Jul 42

President.

Rank.	Name.	Regiment.
Lt-Col.	T.Y.Wills	4 A/Tk Regt RCA

Members.

Rank.	Name.	Regiment.
Major	J.S.Hart	17 Fd Regt RCA
Capt	G.G.R.Harris	5 Lt A A Regt RCA
Capt	Waiting Member F.D.Brooke	17 Fd Regt RCA
Major	JUDGE ADVOCATE N.C.Fraser, ADJ.	5 Cdn Inf 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 A.G.S. Norton

Commanding 5 Cdn Support 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)
F-55642 Pte Anthony Russell O'TOOLE C.B.Highrs.	FIRST CHARGE Sec. 9(1) A.A. WOAS Disobeying in such a manner as to show wilful defiance of authority.	not guilty	guilty	Confirmed RDG
	SECOND CHARGE (Alternative to first) Sec.40 A.A. WOAS Conduct to the prejudice.	not guilty	not guilty	Noted RDG
	THIRD CHARGE Sec.9(1) A.A. WOAS Disobeying in such a manner as to show wilful defiance of authority.	not guilty	not guilty	Noted RDG
	FOURTH CHARGE (Alternative to third)Sec. 40 A.A. WOAS conduct to the prejudice.	not guilty	guilty	Confirmed RDG
	FIFTH CHARGE Sec.9(1) A.A. WOAS Disobeying in such a manner as to show wilful defiance of authority.	not guilty	not guilty	Noted RDG
	SIXTH CHARGE (Alternative to Fifth) Sec.40 A.A. WOAS Conduct to the prejudice.	not guilty	guilty	Confirmed RDG

* 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*) _____ (*Signed*) _____

Commanding 5 Cdn Support 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.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 13th 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
✓ 2. The witnesses
*3. The shorthand writer ✓ JM
~~*(3. The interpreter)~~
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 13th day of July 1942.

J. J. Mills 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 1918 have been complied with.~~

~~Signed this day of 19~~ ✓ JM

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 therein 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.~~ RDG

* 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 15 day of July 1942.

R. D. G. Morton Brig.
Confirming Officer.
COMD., SUPPORT GROUP
5 CDN. ARMD. DIV.

Promulgated and extracts taken in the case of

(a) (Dated) 20 Jul 42 (Signed) [signature] Lt-Col.
Officer Commanding
The Cape Breton Highlanders, C.A. (A.P.)

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.

(11739) Wt. 40115—893 200 m 1/40 P. St. G. 620

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 day of , 19 .

Whereas it appears to me, the undersigned, an officer in Command of , 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.

* 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 :—]

President.

Rank.	Name.	Regiment.

Members.

Rank.	Name.	Regiment.

* 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 .....

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)
F-55642 Pte Anthony Russell O'TOOLE C.B.Highrs.	SEVENTH CHARGE Sec.8(2) A.A. WOAS using insubordinate language to his superior officer.	not guilty	not guilty	Noted R.O.G.M.
	EIGHTH CHARGE (Alternative to seventh) Sec.40 A.A. WOAS conduct to the prejudice of good order.	not guilty.	not guilty	
	(See charge sheet attached)		90 days detention	

I confirm the finding & sentence of the court

~~[illegible]~~

R.O.G. Morton
Brig

15 July 1942

COMD., SUPPORT GROUP
5 CDN. ARMD. DIV.

* 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*) R.O.G. Morton Brig (*Signed*) J. Mills Lt-Col.

Commanding 5 Cdn Support 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.

CHARGE SHEET

The accused, No. F55642 Pte. Anthony, Russell, O'TOOLE, Cape Breton Highlanders, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Sec.9(1) A.A.

WHEN ON ACTIVE SERVICE, DISOBEYING IN SUCH A MANNER AS TO SHOW WILFUL DEFIANCE OF AUTHORITY, A LAWFUL COMMAND GIVEN ~~MX~~ PERSONALLY BY HIS SUPERIOR OFFICER, IN THE EXECUTION OF HIS OFFICE

in that he

in the ~~filed~~ when commanded by signal(Bugle) at or about 1645 hrs, 3rd July 1942, appeared at the place of parade, and when L/C Taylor, A., Regimental Police, in charge of the defaulters Parade, gave the command for the defaulters to fall in the accused, No.F55642 Pte. O'TOOLE, A.R., a defaulter, refused to fall in, saying, "I am refusing to answer all defaulte rs calls and I want to be placed in the Guard Room".

SECOND CHARGE
(Alternative to First)Sec.40, A.A.

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he

in the field, when commanded by signal(bugle) at or about 1645 hrs, 3rd July 1942, said to F55052 L/Cpl. Taylor, A., Regimental Police, in charge of defaulters parade, " I am refusing to answer all defaulters calls and I want to be placed in the Guard Room".

THIRD CHARGE
Sec.9(1) A.A.

WHEN 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 OFFICE,

in that he

in the field, when ordered by Sgt. Petrie, H., Provost Sgt., Cape Breton Highlande rs, in the execution of his office at or about 1645 hrs, 8th July 1942, to fall in for drill parade said, "No, I am not going that's what I was put in here for".

FOURTH CHARGE
(Alternative to 3rd)Sec.40 A.A.

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he

in the field, when ordered by Sgt. Petrie, H., Provost Sgt., Cape Breton Highlanders, in the execution of his office, at or about 1645 hrs, 8th July 1942, to fall in for drill parade, neglected to do so, saying, "No, I am not going that's what I was put in here for".

FIFTH CHARGE
Sec.9(1) A.A.

WHEN 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 OFFICE,

in that he

in the field, at or about 1820 hrs, 8th July, 1942, when ordered by F55331 Sgt. Petrie, H., Provost Sgt., to fall in for fatigue work, said, "No, I'm Not going".

SIXTH CHARGE
(Alternative to 5th) Sec.40 A.A.

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE [redacted] OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he

in the field, when told by F55331 Sgt.Petrie,H., Provost Sgt., at or about 1820 hrs, 8th July, 1942, to fall in for fatigue work said, "No, I'm not going".

SEVENTH CHARGE
Sec.8(2) A.A.

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

in that he

When a defaulter, refused to fall in on defaulters parade when ordered to do so by L/Cpl. Taylor,A., Regimental Police, in charge of defaulters parade, at or about 1645 hrs, 3rd July 1942, saying, "I am refusing to answer all defaulters calls and I want to be placed in the Guard Room".

EIGHT CHARGE
(Alternative to 7th) Sec.40 A.A.

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he

in the field, when commanded by signal(bugle) at or about 1645 hrs, 3rd July, 1942, said to F55052 L/Cpl. Taylor,A., Regimental Police, in charge of Defaulters Parade, "I am refusing to answer all defaulters calls and I want to be placed in the Guard Room".

In the Field,
11th July 1942

J.B.Weir
.....(J.B.Weir)Lt.Col.,
Officer Commanding,
Cape Breton Highlanders,C.A.O/S.

To be tried by field general court martial

R.O.G. Morton
Brig

In the field
11 July 1942

Comd Sp Sp.
2 Can Inf Div

MEDICAL OFFICER'S CERTIFICATE

K.R.(Can) Para 557

I certify that I have this morning examined F55642 Pte.O'Toole,A.R. of The Cape Breton Highlanders and in my opinion he is fit to undergo trial by Court-Martial

Station: In the Field

Date: 13 Jul 42

J.L. Cook Capt
Medical Officer.

Trial of F-55642, Pte.Anthony Russell O'TOOLE, Cape Breton Highlanders.

Held in the Field on 13 July, 1942.

PRESIDENT:

Lt-Col. T. Y. Wills, 4 A Tk Regt RCA.

MEMBERS:

Major J.S.Hart, 17 Fd Regt RCA.
Capt.G.G.R.Harris, 5 Lt A A Regt RCA

JUDGE ADVOCATE:

Major N.C.Fraser, ADJA, HQ 5 Cdn Armd Div.

Prosecutor:- Major C.D.Arnold, C B Highrs.

Defending Officer:-- Capt.A.O.Gunn, C B Highrs.

Officers Under Instruction:

Capt.T.I.Guilboard, CDC att C B Highrs.
Lieut.D.M.Nichol, 4 A Tk Regt RCA.
" P.J.Chadsey, 4 A Tk Regt RCA.
" T.J.E.McClelland, HQ 5 Cdn Armd Div Sp Gp.
" P.J.Archibald, 17 Fd Regt RCA.
" E.J.Morgan, 17 Fd Regt RCA.
" J.H.Grange, 5 Lt A A Regt RCA.
" J.M.Young, 5 Lt A A Regt RCA.
" D.R.MacG.Meish, 4 Cdn Recce Regt att C B Highrs.

The convening order is read in the hearing of the accused.

The accused does not object to the President or any member of the Court.

The Court, the Judge Advocate, and the officers under instruction are sworn.

The accused does not object to K-57793, S/Sgt.J.R.Mahood, CMSC. HQ 5 Cdn Armd Div, acting as shorthand writer.

The shorthand writer is sworn.

The accused answers his name and number and is arraigned on the charges. Charge-sheet marked "C" signed by the President, and attached to the proceedings.

PLEA The accused pleads not guilty to all eight charges.

R.P. 40 (A) and (B) are complied with.

The accused does not desire an adjournment.

P_R_O_S_E_C_U_T_I_O_N

The prosecutor declines to make an opening address.

The prosecutor proceeds to call witnesses.

First Witness:

Captain A.C.Ross, Adjutant, C B Highrs, sworn, examined by prosecutor:

Q. 1. Will you identify yourself to the Court?
A. 1. I am Capt.A.C.Ross, Adjutant, C B Highrs.

Q. 2. Did you attend Battalion Orderly Room at which the accused was present before the CO, C B Highrs, on 3 July 1942?
A. 2. Yes.

Q. 3. Will you tell the Court what happened?
A. 3. On 3 Jul 42 the accused was brought before the CO and awarded 14 days' CB. If my memory is correct he was also awarded 14 days' pay for that same offence.

Q. 4. At about what time of the day was this?
A. 4. Approximately at 1145 hours.

No cross-examination.

By the Judge Advocate:

Q. 5. Was there ever any remission of that sentence or did he continue to be under that 14 days' CB?
A. 5. Continued to be under 14 days' CB.

Q. 6. Still under an award of CB up to and including 8th July?
A. 6. Yes.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 83 (B).

The witness withdraws.

Second Witness:

F-55052, L/Cpl.A.Taylor, C B Highrs, sworn, examined by prosecutor:

Q. 7. Identify yourself to the Court.
A. 7. I am F-55052, L/Cpl.Taylor, A.,

Q. 8. Of what unit?
A. 8. C B Highrs.

Q. 9. How are you employed?
A. 9. As Regimental Police.

Q. 10. Do you recognize the accused?
A. 10. Yes.

Q. 11. As whom?
A. 11. Pte.O'Toole, a defaulter.

Q. 12. Will you give your evidence?
A. 12. When the bugle sounded the signal for defaulters at 1645 hours, 3-7-42, the accused refused to fall in and said "I am refusing to answer all defaulters' calls and wish to be placed in the guard room."

Q. 13. Did the accused appear at the place of parade?
A. 13. Yes.

Q. 14. Did you give the order to fall in?
A. 14. Yes, as a defaulters' parade.

Q. 15. Was the accused there when you gave the order?
A. 15. Yes, and in hearing of my voice.

Q. 16. What was the order that you gave?
A. 16. "Fall in for defaulters' parade, fall in here."

Q. 17. What further evidence have you?
A. 17. At 1820 hrs --

Q. 18. On what date?
A. 18. 8-7-42.

Q. 19. Will you just continue?
A. 19. I went in the guardroom with Sgt.Petrie, he ordered the accused to go on fatigue, the accused said "No, I am not going."

Cross-examination:

Q. 20. When the accused said to you "I am refusing to answer all defaulters' calls and I want to be placed in the guardroom" did he say that in a slack or disrespectful manner?
A. 20. No, he said it as if it was a pleasure.

Q. 21. By his not falling in on that parade did that impede the parade from carrying on as usual?
A. 21. No.

Q. 22. Did you place the accused under close arrest?
A. 22. Yes, at 1800 hrs.

Q. 23. When?
A. 23. On 3-7-42.

Q. 24. When you went in the guardroom with Sgt.Petrie were there any other men in there under close arrest besides the accused?
A. 24. Yes.

Q. 25. Were they ordered to do any extra fatigues at the time the accused was?
A. 25. No, not at that time.

Q. 26. At what time of day was it that Sgt.Petrie ordered him to do these extra duties and what were they?
A. 26. 1820 hrs, 8-7-42.

Q. 27. What duty was that?
A. 27. Fatigue.

Q. 28. And next?
A. 28. That is all I know of.

No re-examination:

By the Judge Advocate:

Q. 29. This first instance that you mention on 3d July, you said the accused appeared at the place of parade?
A. 29. Yes.

Q. 30. Where was he in relation to yourself when you gave the order for the defaulters to fall in?
A. 30. Walking right over towards me.

Q. 31. About how far away?
A. 31. From here to the wall (indicating a distance in the courtroom of approximately 10 feet).

Q. 32. In how loud a voice was it given?
A. 32. About as I am talking now.

Q. 33. And did the other defaulters fall in?
A. 33. Yes.

Q. 34. Going on to the next instance on the 8th, what was the nature of this parade or fatigue which this accused was detailed to go on?
A. 34. He ordered him for fatigue work, what he was going to put him to work at I don't know.

Q. 35. When he gave the order precisely what order did he give?
A. 35. He told him to get ready, that he was going out on fatigue and he said "No, I am not going".

Q. 36. Then was anything further said or done?
A. 36. Not that I recall.

Q. 37. Did Sgt.Petrie stay there for any time after that order?
A. 37. Not very long.

Q. 38. Did the accused make any motion to get ready?
A. 38. No.

Q. 39. Were any other defaulters ordered out at the same time?
A. 39. Not that I recall, there were no other defaulters in there.

Q. 40. Any others that were under arrest in the guardroom?
A. 40. Not that I recall.

Q. 41. Did you see any other instance in which the accused was concerned on the 8th July?
A. 41. No.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 83 (B).

The witness withdraws.

Third Witness:
F-55331, Sgt.H.Petrie, Pro Sgt, C B Highrs, sworn, examined by prosecutor:

Q. 42. Will you identify yourself to the Court?
A. 42. I am Sgt.Hilary Petrie, F-55331, I am Pro Sgt of the C B Highrs.

Q. 43. Do you recognize the accused?
A. 43. I recognize the accused as Pte.O'Toole, A.R.

Q. 44. Will you give your evidence in this case against the accused?

A. 44. At 1645 hrs on 8 Jul 42 I called a defaulters' parade so I went in the guard room, the accused was under close arrest and I ordered him out on defaulters' parade and he said "No, I am not going, that is what I was put in here for." At 1820 hrs on 8 Jul 42 I went in the guardroom and ordered him out on fatigue work and he says "No, I am not going."

Cross-examination:

Q. 45. Was the accused the only man in the guardroom under close arrest?
A. 45. No, two other privates under close arrest, this man was a defaulter.

Q. 46. Did you order the other two men out on fatigue work ?
A. 46. No.

Q. 47. What time did these parades take place?
A. 47. 1645 hrs on 8 Jul 42 and 1820 hrs 8 Jul 42.

Q. 48. These times you have just stated are after the normal parade hrs of the C B Highrs are they not?
A. 48. No.

Q. 49. With regards to the bn training?
A. 49. That is what I mean.

Q. 50. You say these parades were not after those hours?
A. 50. Oh! Yes, they were after those hours.

No re-examination:

By the Judge Advocate:

Q. 51. Just what did you say to him?
A. 51. "You will have to go out and fall in on this parade the same as the rest of the defaulters."

By a member:

Q. 52. Was this defaulters' parade a roll call parade?
A. 52. A drill parade.

By the Judge Advocate:

Q. 53. Then, on that first occasion when you gave the order you have just mentioned, just what did he say?
A. 53.. "I am not going out, that is what I was put in here for" and after a little while I said "You are going to get yourself in a jam" and he said "Well, I want to stay away from Sgt.Pollock."

Q. 54. Did anything further happen after that, did you just leave him?
A. 54. I left him.

Q. 55. At 1820 hrs?
A. 55. I went in and ordered him on fatigue work.

Q. 56. When you went in at 1820 hrs were you alone?
A. 56. No, I had L/Cpl.Taylor with me.

Q. 57. Just what was said by you and the accused and L/Cpl. Taylor at that time?

A. 57. All I said was "You will have to go out and do work with the rest of the defaulters" and he said "I am not going" that is all I can remember.

Q. 58. You don't remember any further conversation?
A. 58. No, I don't remember any.

By the President:

Q. 59. Was Sgt.Pollock in charge of the defaulters' parade?
A. 59. No, he is Transport Sgt.

Q. 60. But you said the accused said he wanted to get away from Sgt.Pollock?
A. 60. I think he meant he would be better in the guardroom than on parade.

By the Judge Advocate:

Q. 61. This would be a normal parade for defaulters and not intended to be attended by other persons in close arrest?
A. 61. For defaulters.

By a Member:

Q. 62. Were there other defaulters working on these fatigues?
A. 62. All defaulters in the battalion.

By the President:

Q. 63. The accused was the only defaulter in close arrest was he?
A. 63. Yes.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83 (B).

The witness withdraws.

The prosecutor had no more witnesses.

The prosecution is closed.

D_E_F_E_N_C_E

R.P. 40 (A) and (B) complied with.

The accused desires to give evidence under oath, to call one witness as to facts, and one as to character:

Defending Officer:-- "First of all I want to show that the accused was under a misapprehension while in the guard room as a defaulter. Secondly that there was some bad feeling between he and Sgt.Pollock, the Transport Sgt. I also want to show that he actually answered defaulters' call"

First Witness:

F-55642, Pte.Anthony Russell O'Toole, C B Highrs, the accused, sworn, examined by Defending Officer:

Q. 64. While under close arrest in the guardroom what duties are you liable to be called on for?
A. 64. What a soldier does on parade.

Q. 65. Did you realize that you were subject to carry out any orders given to you?
A. 65. No, I didn't know I was supposed to work after parade hours.

Q. 66. At or about 1645 hrs, 3 Jul 42, on the signal bugle call did you fall in on the defaulters' parade ground?
A. 66. I was talking to the fellow in charge, I was on the ground.

Q. 67. When you were talking to L/Cpl.Taylor did you use an insulting or disrespectful tone or attitude when you said "I am refusing to answer all defaulters' calls and wish to be placed in the guardroom"?
A. 67. No.

Cross-examination:

Q. 68. When you appeared at this parade ground where defaulters are supposed to fall in did you fall in?
A. 68. No, I didn't fall in on the parade but I was on the parade ground.

Q. 69. What did you do when you came to the parade ground?
A. 69. Just that I refused to fall in on defaulters' parade.

Q. 70. Did you recognize him as a NCO and in charge of the defaulters' parade?
A. 70. Yes.

Q. 71. Did you ever, while you were in the guardroom, have anybody read to you this: "A private soldier under arrest may be ordered to attend parades"?
A. 71. No, that was afterwards, later on.

Q. 72. How much later on?
A. 72. After the orders were given.

Q. 73. But you remember being warned and endangering yourself?
A. 73. Yes.

Q. 74. Which orders are you speaking about when you say "before this", the order for going on defaulters' parade or the orders for fatigue?
A. 74. Drill and fatigue.

Q. 75. This was read to you after you were ordered out on fatigue, or before?
A. 75. After I was ordered out.

Q. 76. How long after?
A. 76. About half an hour after.

Q. 77. Did that make any difference in your attitude ?
A. 77. No, but the next time he ordered me I went.

No re-examination.

By the Judge Advocate:

Q. 78. How long have you been in the army?
A. 78. Two years.

Q. 79. You heard the evidence as to your being up in the Orderly Room and being awarded 14 days' CB?
A. 79. Yes.

Q. 80. Is that correct, were you awarded 14 days' CB?
A. 80. Yes.

Q. 81. And the 14 days didn't expire on the 3d or 8thn you were under CB when these things happened, is that correct?
A. 81. Yes.

Q. 82. Did you not know that when you are ordered to do something by a superior officer that you are supposed to do it and if you think it an improper order to complain about it after?
A. 83. I didn't know I was supposed to do that.

Q. 84. Didn't you know you were supposed to carry out any orders that were given to you?
A. 84. Yes.

Q. 85. Why didn't you carry out the order and put in a complaint?
A. 85. Told me I could not be paraded when in close arrest.

Q. 86. Did you complain to the Orderly Officer?
A. 86. No.

Q. 87. You are visited by the Orderly Officer aren't you?
A. 87. Yes.

Q. 88. Didn't you know that if you had any complaint your proper course was to complain to the Orderly Officer?
A. 88. No, I thought I had to be paraded to the CC.

Q. 89. Did you ask to be paraded?
A. 89. Yes.

Q. 90. Who did you ask?
A. 90. The Orderly Sgt.

Q. 91. When was that?
A. 91. This was that evening.

Q. 92. What evening, the 3d or 8th?
A. 92. When ordered on defaulters' drill, the first case.

By the President:

Q. 93. Was that after you had been read the warning?
A. 93. Yes.

By Judge Advocate:

Q. 94. With reference to the incident on 3 July, did you think you had any justification for refusing to fall in for defaulters' parade at that time?
A. 94. No, just that I didn't want to be with that Sgt.

Q. 95. Then you knew perfectly well at thatttime, on 3d July, that you were supposed to fall in?
A. 95. Yes, but asked them to put me in the guardroom instead account Sgt didn't treat me right.

By the President;

Q. 96. When you asked the COS on the evening of 8th Jul what reply did you get?
A. 96. He said he would but never heard anything about it after.

Q. 97. Did you ask again any time?
A. 97. No, I understood I couldn't get paraded when he didn't come back.

Q. 98. When did you understand that?
A. 98. When he didn't parade me.

Q. 99. In other words, you just assumed that, just guessed at it?
A. 99. Yes.

Q. 100. And you went on defaulters' parade after 8th July?
A. 100. Yes, because I was still in the guardroom.

Q. 101. You have been on defaulters' parades since 8th July?
A. 101. Yes.

Q. 102. When did you ask to be paraded?
A. 102. On the 8th July after had been in the guardroom five days.

Q. 103. Betweenn the 3d and the 8th did you go on fatigues?
A. 103. Never asked me to.

Q. 104. The 8th was the first time?
A. 104. Yes.

By a member:

Q. 105. As soon as you heard this thing read to you you went out from then on?
A. 105. Yes.

Q. 106. When in the guardroom between the 3d and 8th what were you in there for?
A. 106. Waiting for trial.

Q. 107. You had been brought up on charges?
A. 107. Yes.

By the President:

Q. 108. How did you escape from Sgt.Pollock by going into the guardroom?
A. 108. He wouldn't be in there after me.

Q. 109. No, but after all you were not going in there for the rest of your life, you were going back.
A. 109. Yes, I think he would have had me there anyhow.

Defending Officer advises the Court that accused had been transferred to another unit.

Continued by the President:

Q. 110. You knew you were going to be transferred?
A. 110. Yes.

Q. 111. Did you know that on 3d July?
A. 111. Yes, I knew on 30th June.

By the Judge Advocate:

Q. 112. What did you think your actual duties were while in the guardroom.
A. 112. That I had to work during parade hours.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 83 (B).

The witness resumes his place as the accused:

Second Witness:
F-55189, Pte.Matthews, C B Highrs, sworn, examined by Defending Officer:

Q. 113. Identify yourself to the Court.
A. 113. F-55189, Pte.Matthews, C B Highrs, att HQ Sp Gp.

Q. 114. Do you know the accused?
A. 114. Yes, Pte.O'Toole.

Q. 115. What association did you have with him in the C B Highrs?
A. 115. I was a transport driver with him.

Q. 116. Do you know or can you say if he has been detailed for duties oftener than the other drivers in the transport section?
A. 116. Yes, I know of one instance.

Q. 117. Tell us.
A. 117. This particular day, Tuesday, June 30th, was out on battle drill all day and myself with a few other drivers hanging around the transport office doing nothing or hardly anything all day. I was detailed for that night driving, was to go out that night and when Pte.O'Toole came in off battle drill Sgt Pollock told me I didn't have to go that Pte.O'Toole was going.

No cross-examination.

By the Judge Advocate:

Q. 118. That is the only occasion you know of is where he has been detailed more than anyone else?
A. 118. Yes.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 83 (B).

The witness withdraws.

Third Witness:
F-84506, Sgt.C.H.MacLean, C B Highrs, sworn, examined by Defending Officer:

Q. 119. Identify yourself to the Court.
A. 119. F-84506, Sgt.C.H.MacLean, C B Highrs.

Q. 120. Do you know the accused, and if so who is he?
A. 120. Pte.O'Toole.

Q. 121. What association did you have with him in the C B Highrs?
A. 121. I was transport sgt.

Q. 122. Was his work, his ability toward soldiering and his attitude towards seniors satisfactory during your association with him?
A. 122. Yes.

Q. 123. He was prompt and punctual in all duties?
A. 123. Yes, but one time he was getting a little forgetful, I recommended him to be sent to a company for training and then to be sent back to us.

Q. 124. Did you ever have any occasion to charge him?
A. 124. No.

No cross-examination.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 83 (B).

The witness withdraws:

Defending Officer makes following closing address :--

With reference to the charges against the accused, the first charge in particular. I would like to refer to MML, page 17, Chapter III, Para 10, and to AA 9 and notes thereunder (Which reads). In this particular case it was a defaulters' parade, a punishment parade and I don't think that a military duty. It also points out that the disobedience must tend to impede or delay military duties, and it was brought out in the evidence that in no way did it impede or delay anything. I maintain that a defaulters' parade is a punishment parade and therefore not a military duty. I cannot find it listed anywhere in MML but will refere you back to Chapt III, para 17 (4). I think in this case it has been clearly shown in the evidence that the accused was under a misapprehension while in the guardroom under close arrest he was not to be called on to perform any duties outside those normally performed by men on parade. I would refer you to K.R.Can 452, (b) (d) and (e). In other words, while the accused was under the misapprehension that he didn't have to perform any duties outside of regular parade hour duties while un close arrest. He stuck to his guns, as soon as it was read to him he did what he was ordered to do.

Just refer back to MML, Chap III, para 10: I say there was a misunderstanding and I think it is quite clear that the misunderstanding was as to what his duties were when given that order. He disobeyed through a misunderstanding.

With reference to the charge against him under AA 8 (2): I refer you to AA 8 (5) (which reads to the Court). The L/Cpl. in charge of that parade said he was not disrespectful and that he was not insulting. I have no authority for this but I do not see why a man should be called on to perform defaulters' duty while under close arrest because I think close arrest is much more serious. He had already gone to the guardroom for saying he didn't want to go on defaulters' parade and then they go down there and say "Go through that parade" They put two charges against him. Why put other charges, they could have added a charge every five minutes, they ordered him to go out on that parade and that doesn't make sense.

So bearing in mind these facts I think that in all the charges against the accused I have pointed out the laws, the facts and the evidence and I don't see how he can be held amenable?

Prosecutor makes following closing address:

"I would just like to point out that the evidence brought out the statement that the accused made, viz., "I am refusing to answer all defaulters' calls and I wish to be placed in the guardroom" Again, a second time, "I am refusing to go" and a third time he also stated "I am refusing to go" It is direct disobedience because it was an order and it was lawful. It has been brought out by the defence that this was not a lawful mil-

itary parade. I would like to refer to K.R.Can. 472 (b) (i), (which reads). Therefore when they are put on either these fatigues or extra drills it is laid down in K.R.Can. that they are to be done, it is a lawful duty and a military parade. I think we will rest there and the rest is up to the Court."

Defending Officer:-- I still maintain that a defaulter's parade is not a military duty, it is a punishment parade. K.R.Can. 472 (b) (i) says one hour a day, as a matter of fact in this battalion they work two hours a day, but I still maintain it is not a military parade. When he did refuse to obey these orders he was under the impression referred to, as soon as that was read to him he did his work.

The Court is closed for the consideration of the finding.

FINDING: The Court find that the accused, F-55642, Pte.Anthony Russell O'Toole, C B Highrs, is not guilty of the second, third, fifth, seventh, and eighth charges, but is guilty of the first, fourth, and sixth charges. The Court being re-opened the accused is again brought before it, and the finding on the second, third, fifth, seventh, and eighth charges is read in open court. R.P. 45 (C) has been complied with.

EVIDENCE AS TO CHARACTER, ETC. Major C.D.Arnold, C B Highrs, the Prosecutor, sworn, states:- "I produce M.F.B. 355 and certified true copy of M.F.M. 6 relating to the accused, which I have compared with the Regimental Books, and which are true statements as to character and particulars of service of the accused." (Documents read, marked "Y" and "Z" respectively, signed by the President, and attached to the proceedings).

The accused does not desire to address the Court in mitigation or to have the Defending Officer make a plea for leniency.

The Court is closed for the consideration of the sentence.

SENTENCE The Court sentence the accused, F-55642, Pte.Anthony Russell O'Tool, C B Highrs, to undergo detention for 90 days.

Sentence: Detention for 90 days.

CERTIFIED A TRUE RECORD OF THIS TRIAL, this 13th day of July, 1942.

_____, Lt-Col.,
President.

Y Jmills 33
Lt-Col
Pres.

M.F.B. 155
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
F 55642	Pte.	Anthony Russell O'Toole	The C. B. Highlanders.

1. The following is a fair and true summary of the entries in the ~~Service and General Regimental and Squadron Battery Conduct Sheets~~ 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 or appointment	
For	A. W. L. Sec 15	1 times	3	times
For	Offence under Sec 40	1 times	1	times
For	Offence under Sec 8 (2)	1 times	1	times
For		times		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 a court-martial or a civil court of summary awards under Section 47 of the Air Force 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 [illegible] on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and ~~5~~ 10 days in military custody, making a total of ~~5~~ 10 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 20 years.

6. The date of his ~~[illegible]~~ attestation specified in his ~~record of service~~ attestation paper 5 Aug 1940.

7. The service which the accused is allowed to reckon towards discharge is N. A.

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~~ military decoration, or ~~air force~~ military reward (or ~~is in possession of or entitled to a State any air force decoration or reward~~

10. ~~If the accused is a warrant officer.) The accused before he was made a warrant officer has 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 ..... 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 ..... 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 55642 Rank Private

Name Anthony Russell O'Toole of The C. B. Highlanders 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
	NONE			

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~~ 13th day of July 1942. [signature] Capt. Adjt., The C. B. Highrs.

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.

No. F556-42 Name Pte. O'Toole, A. R. Sqn., Battery, or Company } Hq. Corps C. B. H. Date of enlistment } 5/8/40 G.C. Badges } Service or Proficiency Pay } 2 [illegible] Col. M.F.M.-6 (A.R.) 17 (1751-7-41 (1219-20) H.Q. 1772-39-1655) Character Pres.

Date of last entry in Company Conduct Sheet } 30-6-42 No. and date of last drunk } Nil 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
[illegible]	17-4-41	pte		failed to return from on pass at 2100 hrs. 17-4-41 until 1930 hrs. 18-4-41 (8 hrs 30 min) absent 14 dys 5½ hrs. hrs. & 8-3-41 (cost of apprehension $79.37.	cpl. Harold S.G. cpl. McAulay S.G.	10 days C.B. [illegible] pay 14 days C.B. 14 [illegible]	14-7-41	C.A. Arnold mgr. Lt. Col. E.H. Small	1 days pay forf.
Commonwealth Hgs.	19-6-41	pte		A.A. Sec. 15 (1) [illegible] from 2359 hrs. 31-5-42 until 0815 hrs. 1-6-42 (absent 8 hrs. 16 min)	sgt. Pollock J.F.	7 days C.B.	2-6-42		out forf 1 days pay F.R. 81
Field	31-5-42	pte		A.A. Sec. 49 neglect to prejudice etc in that he on the 12/6/42 did go on weekend pass without properly maintaining his whole W.D. #C.2. 4205375 found to be in need of battery water & was in a greasy condition	cpl. McKeigan J.G.	7 days C.B.	16/6/42	C.A. Arnold mgr.	
Field	12/6/42	pte							

(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	30-6-42	pte		A.A Sec. [illegible] (2) W.O.A.S. using insubordinate language to Superior Officer in that he when detailed for duty by Sgt Pollock, did say Jesus Christ am I the only one for duty around here. I am not going to go I am going to see Capt. Archibald.	Sgt. Pollock, J.F.	14 days C.B. 14 days pay	3-7-42	Lt Col. [illegible]	

Certified True copy
A. L. Kosslyn Adj.

COUNTER NUMBER 557691

HOUR 10.50

OPERATOR'S INITIALS RS

RELIEVING OPERATOR O.G.

PPP-85

PTE OVERTON ER

SCHEDULE.

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

Accused: D-140830 Pte Edward Roy OVERTON, CIC, 11 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 C.W.L. 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 ..... beginning on (date) .....~~ ~~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 12 days, of which 0 days were spent in hospital.(1) Open Arrest.
(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:

45 days Forfeiture of Pay

(Sgd) ..... 19 Jun 44 (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 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 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 confirm finding & sentence but remit 15 days Forfeiture of Pay

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

Date 21 Jan 44 (Sgd) G Francoeur
(G. Francoeur) Brig
Commanding ..... Confirming Offr Comd 2 Cdn Base Sub Area RE Gp

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

Accused.	Date.	Signature of Offr.
D 140 830 Pte Edward Roy Overton	22 June 44	Fwf Sandee Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Vol 1/2 CBRA Rpt AB at CMHQ IN AD 1/97 PPP 83

FIELD GENERAL COURT-MARTIAL

4/3884

Convened by Order of Brig G Francoeur Comd 2 CBRG dated 17 JUN 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent alt 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-140830	Pte	Edward Roy	OVERTON	CIC, 11 CBR Bn

PROCEEDINGS REVIEWED 27 Jun 44 Lt Col Judd Capt REVIEWING OFFICER, JAG BRANCH C.M.H.Q. ENGLAND

RECEIVED 28 JUN 1944 JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED Date 24 JUN 44 Gdn. See GHQ 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ..... on (date(s)) 19 JUN 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 8/65

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.(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 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 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 ND (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 A McBRIDE	CAC	12 CBR Bn
Member	CAPT	R S SWAIN	CAC	12 CBR Bn
Member	"	W T CLARK		13 CBR Bn
Judge-Advocate				
Prosecutor	Lieut	R L Goodenough		11 CBR Bn
Defending Offr	"	J E Martin		11 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 adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused D140830 Pte Overton E R. before arraignment make(s) (no) objection(s) to the order convening the Court, to the composition of the Court, and to the President. (1) Nil
(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 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..........(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.

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) (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 ....Yes Sir – Character Witness only..........
(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 ....yes, through my def. offr. – see notes..........(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(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.

H.Q.S.

CHARGE SHEET

The accused, D-140830, Pte. EDWARD ROY OVERTON, CIC attached to 51 Coy., 11 C.B.R. Bn., a soldier of the Canadian Army overseas, placed on Active Service, is charged with:

CHARGE
A.A. Sec. 15 (1)

WHEN ON ACTIVE SERVICE - ABSENTING HIMSELF WITHOUT LEAVE

in that he

A.A. Sec 15(1)

In the field, at 2230 hrs, 7 Jun 44, did absent himself without leave from 11 CBR Bn., until 0815 hrs 8 Jun 44. (Total Absence 9 Hrs 45 mins)

In the Field.
12 June 1944

.....
(G.H. Logie, A/Lt.-Col.)
Commanding Officer, 11 CBR Bn.
C.A. (O)

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
18 JUN 44

(G Francoeur) Brig
Comd 2 Cdn Base Rft 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-140830	Pte		Edward Roy	OVERTON	CIC, 1 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*) 18 JUN 44 endorsed by me, (~~or by an offr of my choice 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 A McBRIDE (Must be named. RP 106.)	CAC	12 CBR Bn (Unit.)

MEMBERS.

Capt	R J SWAIN	CAC	12 CBR Bn
Capt (Rank.)	W J CLARK (Named or detailed. RP 106.)		13 CBR Bn (Unit.)

WAITING MEMBER.

Lieut (Rank.)	J A CAMPBELL (Named or detailed, if any. RP 106.)	13 CBR Bn (Unit.)

~~JUDGE ADVOCATE~~

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

On Active Service in the Fd

in ENGLAND (Country.)

G Francoeur (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

(G Francoeur)

Date 18 JUN 44 Commanding 2 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAPS (1st list of AFAS) 40-7-8/1697 (4031)

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

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 557)
(CMHQ CL 173)

I certify that I have this day examined P140830
(No.)

Pte. E.R. Overton and in my opinion he is
(Rank) (Name)

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

Station 10 Bn CIC

Date. 18 June 44

Kasian Capt (Sgd)
Medical Officer
(unit) 13 Bn 2CBRY.

E.1 H.B.S.

Pte K 52761 Sgt. Major McBride J.C.

The accused in my Coy approx 4 wks. and during this time I have known him to be an efficient soldier. He has never been "up" in my coy. before except for this incident. His conduct as a soldier has not been quite as good as it might have been due possibly to his youth.

Plea in Mitigation
in the Case of
Pte. Overton

9th S.

Pte. Overton is only 19 years of age and has been in the army since June 1943. He has been in England for 6 months, and has a ~~fairly~~ good record.

Pte. Overton has been with the Black Watch and he too has been recently attached to 1st Can. army HQ's. for a period of roughly one month. He also had the opportunity of remaining with Army HQ's, but he turned this down thereby hoping to get back to the Regiment. He was sent to 11 Bn. 2 C.B.R.D. and the second night there, he accompanied by Pte. Thirsk, decided to go out to celebrate the opening of the Second Front.

He also had a few drinks, perhaps more than he should have had and he returned back to Camp at approximately 0030 hrs.

Once back he found his way to his tent, and completely forgot to report to the Guard Room, and it was not until 0815 hrs that he was checked in.

He was certainly not aware of the seriousness of being late. With Battalions and perhaps even more so at Army HQs this was not treated as a particularly serious matter.

At no time had he been informed of the rules regarding A.W.L., nor did he have any intention of getting into serious trouble.

This is his first Court Martial, and he states that it will be his only one.

He asks the Court to deal leniently with him so that he will be able to rejoin his Regiment and do the work for which he has been trained.

Respectfully submitted,
J. F. Martin, Lt.
Defending Officer.

E F

Summary of Evidence
IN THE CASE OF

D-140830, Pte. EDWARD ROY OVERTON, CIC, attached to 51 Coy, 11 C.B.R. Bn., a soldier of the Canadian Army Overseas, placed on Active Service, is charged with:

CHARGE: WHEN ON ACTIVE SERVICE - ABSENTING HIMSELF WITHOUT LEAVE
Army Act., Sec. 15 (1)

THE COMMANDING OFFICER HAS DIRECTED THAT THE EVIDENCE BE TAKEN ON OATH.

FIRST WITNESS: A-50149, L/Sgt. Robson, Walter Richard, Essex Scot R; att'd to 51 Coy, 11 CBR Bn, C.A. (C) having been duly sworn states:

At Tattoo roll call, at approximately 2230 hrs 7 Jun 44, whilst acting as C.O.S. 51 Coy 11 C.B.R. Bn, I called the no. rank and name of the accused D-140830, Pte. Overton, Edward Roy., a soldier on strength of 51 Coy.; he failed to answer. I repeated his no. rank and name twice, but he did not respond, nor could he be found after a search of the Coy lines had been made.

W R Robson
.....
(Walter Richard Robson, L/Sgt.

THE ACCUSED DECLINES TO CROSS-EXAMINE THE WITNESS.

SECOND WITNESS: D-81093 , Sgt. Frost, William Frederick Leslie, Black Watch R. (R.H.C), attached to 51 Coy, 11 CBR. Bn., C.A. (C) having been duly sworn states:

At 0815 hrs approximately on 8 June 44 I was a Sgt. of the Black Watch Pl. in 51 Coy. I called the no; rank and name of the accused on the first parade at approximately 0815 hrs and Pte. Overton, E.R., answered. Due to the confusion arising out of incoming and outgoing drafts, there had been no reveille roll call on the morning of 8 June 44, and the s/m roll call at approximately 0815 hrs. was the first taken on that day.

W F Frost
.....
(William Frederick Leslie Frost
Sgt.)

THE ACCUSED DECLINES TO CROSS-EXAMINE THE WITNESS.

QUESTION TO THE ACCUSED:
"Do you wish to make a 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 OF THE ACCUSED:
"No, Sir."

E R Overton
.....
(Edward Roy Overton, Pte.)
51 Coy., 11 CBR Bn., C.A. (C)

I CERTIFY THAT THE RULES OF PROCEDURE 4(c) (d) (e) (f) & (g) have been complied with.

A

This Summary of Evidence of two pages has been taken down by me in long-hand in the presence and hearing of the Accused in the Field at 11 CBR Bn., this 12th day of June 1944.

G Erwin Fleury
(G.E. Fleury, Lieut.)
R.H.L.I. 51 Coy., 11 CBR Bn.
Officer detailed to take summary.

No D140870 Name Overton E R | Sqn, Battery, or Company | Corps CIC | Date of enlistment 4 June 1940 | Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3488) | F x B

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 | 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)					
				Certified true copy of the regtl document					
				Impardee Capt. Adjt 11 C BR Bn.					

(PTO)

Ex. C

M.F.B. 355
22M—5-41 (572-3)
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-140830	Pte.	EDWARD ROY OVERTON	"CIC" 11 CBR. Bn.

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, 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 or appointment	
For	Nil	times	Nil	times
For	Nil	times	Nil	times
For	Nil	times	Nil	times
For	Nil	times	Nil	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 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 O.A. 12 days in ~~Air Force~~ 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 ~~[illegible]~~ attestation paper is 19 years 9 mos.

6. The date of his ~~[illegible]~~ attestation specified in his ~~[illegible]~~ attestation paper is 4 June 1943

7. The service which the accused is allowed to reckon towards discharge is 1 year 7 days

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

9. The accused is in possession of ~~[illegible]~~ military decoration, ~~or air force reward (or is in possession of or entitled to)~~ military. State any ~~air force~~ military decoration or reward. Nil

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

Fwp 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 the regiment (or corps) the rank of~~ ..... ~~dated~~ .....

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

..... ~~Date of promotion~~

~~In the rank of~~ ..... ~~xxxxx~~

~~In the rank of~~ ..... ~~xxxxx~~

~~In the rank of~~ ..... ~~xxxxx~~

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

SCHEDULE

~~AT FORM~~

Fwp ~~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~~ ..... ~~xxx~~ ..... ~~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 I L Fwp		

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 ..... day of June 1944.

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.

F.M. Pardee Capt.

(F.M. Pardee, Capt. & Adjut.

CCC-4

CPL OWENS A.M.

SCHEDULE.

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

Accused: A55284 Cpl A. M Owens

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 abbreviation	Not Guilty	Not Guilty	
3rd	Not Guilty	Guilty	
4th	Not Guilty	Guilty	
5th	Not Guilty	Not Guilty	
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.)

WDS7 ~~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 240 days of which 240 days were spent in hospital.(1) WDS7

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under R2.)

Sentence Awarded by the Court To undergo detention for 60 days 10 days of which to count

(Sgd) W.D. Strum Major — 29 Nov 43 — (Sgd) J.W. Aylmond 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 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 on the ~~two and together~~ first charge. I do NOT confirm the finding on the Third and fourth Charges. I mitigate the sentence & that it shall read as follows "To undergo detention for 30 days, and I confirm the sentence so mitigated. JCR

~~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 5 Dec 43 (Sgd) J.C. Rodger Major

Commanding ~~Officer~~ A/Comd 4 Cdn Armd Div

Confirming Officer.

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

Accused.	Date.	Signature of Offr.
A-55284 Pte Owens. A. M.	9 Dec 43	[signature] LT. COL. O.C. 15 CDN. FD. AMB. R.C.A.M.C. C.A.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CCC-4

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA3) 40-P & R-1698 (28614)

Convened by Order of Brig N.E. Rodger A/Comd 4 Cdn Armd Div dated 28 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) 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.
A55284	Cpl	A	M.	Owens	15 Cdn Fd Amb RCAMC

PROCEEDINGS REVIEWED 18 Feb 44 W.H. Waugh Lieut REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 29 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 fnm 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 A93, 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) WDS7 The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and WDS7 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. WDS7

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) WDS7 ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ WDS7 (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 ~~No~~ WDS7

~~The Interpreter is sworn.~~ (1) Do you object to M11436 S/Sgt Elliott as shorthand writer ? Ans No Sir WDS7 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 J.W. Aylmond 15 Cdn Fd Regt
Member	Capt J.A. Clendenan 4 AAD 4 Cdn Armd Div
Member	Capt H.A. Dawson 4 Cdn Armd ~~Div Tpt Coy~~ RCASC
Judge-Advocate	Major W.D. Strum HQ 4 Cdn Armd Div
Prosecutor	Capt J.K. Kelly 15 Cdn Fd Amb RCAMC
Defending Offr	Capt N.J. England HQRCAMC 4 Cdn Armd Div

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 Cpl A.M. Owens before arraignment make(s) (no) ~~no~~ plea (1) WDS7

(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 R&P 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~~) WDS7 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.)

WDS7 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 and 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 ~~4~~ 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 one 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~~ (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 dismissed on the ..... charge(s), and allowed on the ..... charges, 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. Do you intend to call witnesses on your behalf? Ans Yes. Are they witnesses as to character only? Ans Yes.
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 10 fn 10. 4. RP 40 fns 2, 9A*)

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 1st - 3rd - 4th 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 (~~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(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 X and Ex Y 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.(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 41(5), MML p 120. 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. A-55284 Cpl. Owens, A.M. 15th Cdn Fd Amb RCAMC, 4th Cdn Armd Div, a soldier in the Canadian Army Overseas charged with:-

First Charge
AA Sec 15 (1)

ABSENTING HIMSELF WITHOUT LEAVE

In that he
in the field on Nov 14 43 absented himself without leave from 1700 hours 14 Nov 43 till 0330 hours 17 Nov 43. (Total absence 3 days 5 hours and 30 mins.)

Third ~~Second~~ Charge
AA Sec 40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that he
in the Field on 17 Nov 43 after being issued with a Special Pass by K.85276 L/Cpl. Norton, L.A.C. of No. 5 Cdn Provost Coy at 2330 hrs. 17 Nov 43 to return to his unit immediately, failed to do so and did not return until 2210 hrs 19 Nov 43.

Fourth ~~Third~~ Charge
AA Sec 40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that he
in the Field on 17 Nov 43 was in possession of a document purporting to be a genuine pass well knowing that it was not genuine.

Fifth ~~Fourth~~ Charge
AA Sec 24 (2)

LOSING BY NEGLECT HIS REGIMENTAL NECESSARIES.

In that he
in the Field between 12 Nov 43 and 19 Nov 43 lost his Service Book, complete (MSM I (Parts 1, 2 and 3.))

Second ~~Fifth~~ Charge
(Alternative)
AA Sec 15 (1)

ABSENTING HIMSELF WITHOUT LEAVE

In that he
in the Field on 14 Nov 43 absented himself without leave from 1700 hours 14 Nov 43 until 2210 hours 19 Nov 43. (Total absence 5 days 5 hours and 10 mins.)

17 Nov 43

(C.P.S. Leef) Lt-Col.,
Officer Commanding
15th Cdn Fd Amb RCAMC

In the Field
19 Nov 43

To be tried by F.G.C.M.
(N.E. HODGSON) Brig.
A/Comd 4 Cdn Armd Div

H.Q. 4

J. W. Aylwood Major President
Wrong [illegible] [illegible]

FIELD GENERAL COURT-MARTIAL

CFA05 (In lieu of AFA3)
40/P4/8/1697 (2803)

(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.
A 55284	Cpl	A	M	OWENS	15 Cdn Fd Amb RCAMC

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*) 28 Nov 43 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ". JER

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.)~~ JER
(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.~~ JER
(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.W. AYLWORD (Must be named. RP 106.) 15 Cdn Fd Regt RCA (Unit.)

MEMBERS.

Capt J.A. CLENDINAN No 4 LAD 4 Cdn Armd Div

Capt (Rank.) H.A. DAWSON (Named or detailed. RP 106.) 4 Cdn Armd Bde Coy RCASC (Unit.)

WAITING MEMBER.

Lieut (Rank.) J.S.L. KING (Named or detailed, if any. RP 106.) HQ RCE 4 Cdn Amrd Div (Unit.)

JUDGE-ADVOCATE.

Major (Rank.) W.A.D. GUNN (Must be named, if any. RP 106.) HQ 4 Cdn Armd Div (Unit.)

On Active Service in the Fd

in England (Country.) J.E. Rodger (Signed personally. RP 105 in 2.) (NE.RODGER) Brig (Rank.)

Date 28 Nov 43 A/ Commanding 4 Cdn Armd Div
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

HQ 15 Cdn Fd Amb RCAMC
November 29, 1943

This is to certify that A55284 Cpl OWENS, A M

is fit to undergo trial by Court Martial.

Medical Officer
15 Cdn Fd Amb RCAMC

The Prosecutor declines to make an opening address

First Witness for the Prosecution

A 62109 Sgt Daniels, J.W. 15 Cdn Fd Amb being duly sworn is examined by the prosecution.

Q.1 Will you identify yourself to the court, giving your number, rank, name and unit?
A.1 Sgt Daniels, J.W., A 62109 B Coy 15 Cdn Fd Amb.
Q.2 Will you tell the court what you know of a leave pass issued to the accused, in respect to the date it expired, also tell the court what you know of his return to this unit?
A.2 On Nov 14 1943 on my duty as orderly Sgt, Cpl Owens had been issued with a 48 hrs pass from 1700 hrs 12 Nov to 1700 hrs 14 Nov/43. As Cpl Owens had not checked in at this time I entered his name on the absentee report of that date. On Nov 19th on my tour of duty as orderly Sgt Cpl Owens checked in to me at 2210 hrs sober and properly dressed reporting the loss of his service pay book complete with pass.

The Defence declines to cross examine

Questioned by the court

Q.3 You say the Cpl checked in, how did he check in?
A.3 He came in to the Orderly Sgts' room.

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b).

Second Witness for the Prosecution

K 85275 Cpl Horton, L.A.G. No. 6 Cdn Provost Coy being duly sworn is examined by the Prosecution

Q.1 Will you identify yourself to the court?
A.1 I am K 85275 Cpl Horton, L.A.G. of No. 6 Coy Area Provost.
Q.2 Do you recognize the accused Cpl Owens in this room?
A.2 Yes sir (Identifies the accused)
Q.3 Will you tell the court what happended on the evening of 17th of this month in respect to the accused Cpl Owens?
A.3 Sir, I was on duty in London on 17 Nov 43 accompanied by L/Cpl Doyle. At 2330 hrs on Coventry St I came upon the accused Cpl and an American, they were standing in a doorway and I shone my torch on them. It was not very bright but I could still see he was a Cdn and I could see that he was improperly dressed in that he was wearing a collar and tie and his battle dress open to the extent of two hooks. I requested to see his pass which he produced. On examing it I found the pass was in my opinion very scrawly. I asked him about it and he said it was a legitimate pass but the orderly room clerk was at fault. I was not satisfied so I asked for his pay book which he produced parts 1 & 2 and I asked him when he was last paid and he gave me the date which was the 11th. I also asked him for his railway ticket and the date on it was the 12th so I gave him the benefit of the doubt and said I guess your pass is allright. I could not tell any different because my light was so poor. I gave him a special pass no 2354 for being improperly dressed and ordered him to return to his unit by the first available train. I reported back to HQ at about 0130 hrs and in the orderly room I noticed the pass had been altered from a 4 to an 8 which made it 12th to 18th. After looking at it in the orderly room and seeing it was false I had the unit contacted and they informed me that he was absent and in accordance with that evidence I sent in a charge. The man was free in that I had given him a special pass and sent him on his way back to camp.

Q.4 Can you identify this as the pass which you took from the accused?
A.4 Yes that is the pass.
Q.5 Can you identify this?
A.5 It is the duplicate of the pass which I gave to the accused. (Documents submitted to the court, pass which was removed from accused marked exhibit A, duplicate of special pass is marked Exhibit B and signed by the President)

Cross examined by the Defence

Q.6 Are you absolutely certain the man you stopped is the same man here?
A.6 Yes sir.
Q.7 There is no doubt in your mind?
A.7 I shone my torch full in his face.
Q.8 Are there any things which stand out which enabled you to recognize the accused?
A.8 In my opinion he talks with a drawl rather broad at the same time and at the time I talked to him and the American the American said he was an American in the Cdn forces.
Q.9 You said you could not make out anything definitely wrong with the pass until you arrived back in the orderly room in the light?
A.9 That is right sir, writing is very hard to read with a torch.
Q.10 You say you had a flash-light but could not make out the pass clearly with the aid of the light?
A.10 That is right sir.

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

G 48749 L/Cpl Doyle, V.L. No. 6 Cdn Provost Coy being duly sworn is examined by the Prosecution

Q.1 Will you identify yourself to the court?
A.1 G 48749 L/Cpl Doyle, V.L. No. 6 Area Coy Cdn Provost Corps.
Q.2 On the 17th of Nov. you in company with Cpl Horton stopped a member of this unit in London on Coventry Street, do you recognize him in the court?
A.2 Yes sir (Identifies the accused)
Q.3 You are certain?
A.3 Yes sir.
Q.4 Will you tell the court please, exactly everything you can recall on that night concerning the accused?
A.4 Sir, at London on 17 Nov 43 I was on duty on Coventry Street in company with Cpl Horton and about 2330 hrs we saw Cpl Owens. He was improperly dressed in that he was wearing a collar and tie and had his tunic open to the extent of two buttons. Cpl Horton requested to see his pass which he produced. Cpl Horton asked him if it was a good pass and he said it was. Cpl Horton then informed him there would be a charge laid for being improperly dressed and issued him with a special pass and told him that his original pass would be forwarded to his unit along with the charge and also toldhim to catch the first available train back. On reporting back to HQ we examined the pass and found that it had been altered. Cpl Horton then laid a charge of being in possession of a false document.
Q.5 What time approximately was the next train back to camp?
A.5 Sir it was not until the next morning.

Cross examined by the Defence.

Q.6 There is no doubt in your mind this is the man you stopped?
A.6 Yes sir.
Q.7 On what factors are you so certain this is the man you saw?
A.7 Sir, I remember his face and I remember his voice, I heard him talking outside.

Q.8 What was peculiar about his voice?
A.8 Well sir, he had a slow way of talking a drawl.
Q.9 Did the man you stopped in London have USA badges on his shoulder?
A.9 I don't remember sir.
Q.10 Was he wearing any ribbons?
A.10 I don't know sir.
Q.11 You did not by any chance check the man's identity discs to make sure it was Cpl Owens?
A.11 No sir.

Questioned by the court

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

Capt J.K. Kelly, 15 Can Fd Ambl, the Prosecutor being duly sworn states:-

I am Capt J.K. Kelly, 15 Can Fd Amb. I was detailed by the OC of this unit to take the summary of evidence in the case of Cpl Owens. At the end of that summary this statement was read to the accused. "Do you wish to make any statement or 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 evidence you giv will be taken down in writing and may be used as evidence."
As a result of this the accused gave a statement.

The Defence declines to cross examine.

The statement is admitted by the court.

The statement made in the summary of evidence by the accused is read to the court.

The Defence declines to cross examine.

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b).

Fifth witness for the Prosecution

Major J.A. MacLennan, 15 Can Fd Amb being duly sworn is examined by the Prosecution.

Q.1 Will you identify yourself to the court?
A.1 I am Major J.A. MacLennan, 2 i/c 15 Can Fd Amb RCAMC.
Q.2 I have called you as a witness to identify a pass made out by you in the name of Cpl Owens, I would like you to identify your signature on the pass first?
A.2 It is my signature on Exhibit A.
Q.3 Do you recall making the pass out?
A.3 Yes I do very well.
Q.4 Can you tell the court the inclusive days you made it out for?
A.4 It was a 48 hrs pass from 12 Nov to 14 Nov 1943. This pass was one there was a little question about. At the time the name of the accused did not appear on the pass list and he asked me about it and convinced me that he had turned in his name or request and this pass was made out separately.
Q.5 Do you notice any changes in the pass now?
A.5 According to it now it is from the 12th to the 18th, it is certainly not my eight.

The Defence declines to cross examine

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

First Witness for the Defence

The accused A 55284 Cpl Owens, A.M. 15 Can Fd Amb being duly sworn is examined by the Defence

Q.1 Is it true that in the past two years you have made on several occasions attempts to see your C.O. that you could be transferred to the American forces?
A.1 Yes sir.
Q.2 Have you ever received any satisfactory reply?
A.2 No sir, I have not sir.
Q.3 Will you tell the court why you went to London the week end of 14 Nov?
A.3 The week end of the 12th of Nov I went to London under the impression I could get to see the Adjt General of the American forces inEngland. The Col had informed me that my application had been turned down by the American forces and by going in there I found out that it had never reached their HQ.
Q.4 Will you tell the court how you lost your pay-book?
A.4 I proceeded to London Friday the 12th and got in London about 0830. I proceeded to the Rainbow Club and arranged for a bed there. I got to bed about 11 o'clock that night and when I got up in the morning I went right toMarble Arch.
Q.5 What was at Marble Arch?
A.5 American Army HQ sir. I saw the Adjt of the Bde and he referred me to the Adjt of the Div and the Adjt of the Div sent me to the Adjt General for the information I wanted.
Q.6 Lets get back to the loss of this pay book?
A.6 I lost my pay book in the Rainbow Club between the hrs of 9 & 10 I had been out and had some beers and then went back to the club had some coffee and cake and went into the lounge and sat down and fell off to sleep. I was awakened about 10 o'clock by the American M.Ps who told me I could not sleep in there. I went to the Canteen and ordered coffee andcake and when I came to pay I reached for my pay book and it was gone with a pound ten, pass, address book and authorization to sign for mail. The lady gave me coffee and cake free I had no money.
Q.7 Did you at any time alter the dates on the pass?
A.7 No sir, I did not sir, I put the pass in my pay book and never took it out since I left the unit area.
Q.8 On the night of 17 Nov 43 about 2330 hrs were you stopped by the Provosts?
A.8 No sir, I was not.
Q.9 Where were you at that time?
A.9 I was in Fulham at the house of some friends of mine.
Q.10 Your original week end pass was from the 12 to the 14th, even when you had lost your pass why did you not report back to your unit?
A.10 The Adjt of the Div told me it would be Monday before I could get in to see the Adjt General that was on Saturday the 13th.
Q.11 Is it not correct to say that you have asked for permission to transfer to the American forces on several occasions?
A.11 Yes sir, I have papers from my senator at home and from their HQ.
Q.12 The fact that you had never been given a satisfactory answer did you not decide to stay until you got some satisfaction and that is the reason you did not return?
A.12 Yes sir.
Q.13 Did you get in to see anyone who could give you some satisfaction?
A.13 Yes sir I did.
Q.14 On the night of 17 Nov the Provost say you were wearing a collar and tie?
A.14 No sir, I have notworn a collar and tie since I joined the Can Army, furthermore, I don't even own one.
Q.15 Where did you go on the night of 14 Nov?
A.15 I stayed with my friends in Fulham.
Q.16 Is it true that from 1922 to 25 and 1927 to 1930 you served with the American army?
A.16 Yes sir, I did.

Q.17 It was in the Phillipines?
A.17 Yes sir, Iserved 17 months in the Phillipines.
Q.18 Is it true that you have been mail orderly for this unit since mobilization?
A.18 I have been mail orderly since we left Valcartier, over two years

Cross examined by the Prosecutor

Q.19 You say you had difficulty in arranging transfer to the American Army, did you see or make any attempt to see the present C.O.?
A.19 Yes I did sir, back in Brandon.
Q.20 After you had been to see the American Army HQ you paraded when you came back and you got in to see him and got an answer right away?
A.20 Yes sir.
Q.21 Did you make any attempt to get an extension of leave in London?
A.21 I was ignorant of that sir, trying to get an extension.
Q.22 You have heard of it being done in this army?
A.22 I have heard of quite a few who have asked but they were turned down.
Q.23 Did you see the Adjt General on the 15th?
A.23 No sir, I did not see him until Friday 19th.

Questioned by the court

Q.24 On the 17th you were in Fulham?
A.24 Yes sir, I was not back in West London after 10 or 1030 after the 13th. I knew if I went around there the Provost would stop me.
Q.25 Why did you not clear it up sooner?
A.25 I was informed I had to wait on Tuesday and I waited every day from 6 to 4 with the exception of Friday.
Q.26 You were not in London at night but were therein the day time?
A.26 I was in Marble Arch in the day time
Q.27 What did you do in the unit were you permanent mail orderly?
A.27 I am nursing orderly and mail orderly sir.

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

Major J.A. MacLennan, is recalled by the defence to give a short evidence

Q.1 I have called you in to tell us how long you have known Cpl Owens and of his service in the 15 Cdn Fd Amb?
A.1 I have known him since the spring of 1941. He enlisted at Windsor where I was the medical officer and went into the 15 Cdn Fd Amb about the same time I joined the unit. Ever since coming to the unit he has been a very good soldier and has been an efficient nursing orderly and I think he deserved his rank of Cpl which he holds. In addition to that he has been entrusted with looking after the unit mail. I cannot give the exact dates he has been on that job but it hasbeen over a year and a half and it is a position entailing a great deal of trust and at no time has he betrayed that trust.
Q.2 Is it true that Cpl Owens has been a confirmed Cpl for slightly over a year?
A.2 I cannot give the exact dates but it has been for some considerable time.

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.

Closing address of the Prosecution

There is very little to say, the evidence speaks for itself. The question of the light used by the Provost has been brought up by the Defence, but I feel that when two men can so positively identify a man, they cannot be wrong. The accused said that he lost his paybook and his authority to receive and send mail. If that is so, it is rather strange that he was able to produce a pass when the Provost demanded it. He has been unable to produce any documents since. The defence may say that some other person usedthese articles.I cannot see what purpose would be served for another person to change the dates on that pass. It is difficult for me to understand why a man who has served so many years in the American Army and over two in the Can Army would not at least try for an extension of his pass. There is also his privilege leave and it would not make a great deal of difference if he had waited until he had this leave or till when it came due. The accused mentioned the fact he did not go to West London because he was afraid he would be picked up by the Provost, apparently he had no fear on meeting Provost in the daylight. The alterations on the pass is very evident and has been noticed by the officer who made the pass out, Major MacLennan.

Closing address by the Defence

The Prosecution has mentioned that he thinks the identification by the Provost was very certain. The light used by the Provost was so poor that he could not tell the pass had been altered until he took it back to his HQ. and closely examined it. I do not think this identification is as fool proof as the Prosecution would have us believe and these men cannot be certain that this is the man they stopped on the alleged night. Morecver, anyone who had taken this pass from the accused would have reason to change the dates, for the reason that they would have to be changed to make it valid. We are trying here today a man whom I consider has been a good soldier, who came over from the U.S and joined the Can Army and up to this time has served efficiently with no serious crimes and he has done a good job. He has been looking after the unit mail which is a job which will determine the man's character, and morecver he had reason to stay in London, that reason being that he had never had a satisfactory answer from the unit about his transfer and this time he went all out. I have here a copy of his discharge from the American army and they list here at expiration of service, character excellent. I repeat we have a man here who has been a good soldier and I would make a plea that the sentence to be awarded to him be as lenient as possible under the circumstances.

CANADIAN ARMY OVERSEAS

LEAVE PASS

Pass No. ..... Date 12 nov. 43

No. A55284 Rank Cpl. Name Owens A M

has permission to be absent from his unit from 1700 hrs. 12 Nov 43

to 1900 hrs. 19 nov 43 for the purpose of proceeding to

London

Exhibit D

15 CDN FD AMB
RCAMC
1943
ORDERLY ROOM
Orderly Room Stamp

J A MacLennan Maj

LT. C

O.C. 15 CDN. FD. AMB. R.C.A.M.C.

(Unit Signature Stamp)

ENDORSEMENTS

Sec. 18(d)	R.T.O.—Station Master—Local Police

INSTRUCTIONS

1. If you are travelling with free warrant have this pass stamped or endorsed in the space provided above by the R.T.O., station-master or local police at the place where you spend your leave, if you are unable to return to your unit due to interruption of transportation facilities have it endorsed to that effect by one of these officials.

2. Arms and equipment will not be checked at railway stations except during a wait-over between trains.

3. Carry this pass and your pay book (M.B.M.1) at all times while on leave.

4. **Illness on leave.**
(a) Apply to the nearest unit of the Canadian Army, or
(b) If none in the area, apply to the nearest unit of the British Army, request necessary treatment and that the O.C. communicate the facts to your unit. If unable to rejoin your unit before the end of your leave obtain a written report from the M.O. and hand to your C.O. on rejoining, or
(c) If no military unit in the area, apply to a civilian doctor or the nearest Emergency Motion Service Hospital. Obtain a letter verifying the facts and send to your C.O. at once. If unable to rejoin your unit before the end of your leave obtain a certificate and hand to your C.O. on rejoining.

5. Turn this pass in on rejoining your unit.

CFA 24
40/P & S/1509
(In pads of 100/[illegible])

CANADIAN ARMY OVERSEAS **Nº** B 2354

SPECIAL PASS issued to:—

Regtl. No. [illegible] Rank Cpl. Name OWENS A.M.

Unit 15 Con. Fld. Amb. R.C.A.M.C.

The bearer, having committed a breach of Military Discipline, has been ordered to return to his unit in accordance with Overseas Routine Order ~~1017 para. 9~~ 3363 para. 2.

This pass is valid only for the period necessary to permit of immediate return to his unit. Original A.F. B.295 issued to bearer has been taken possession of by—

Regtl. No. K85276 Rank Cpl. Name MORTON L.A.G.

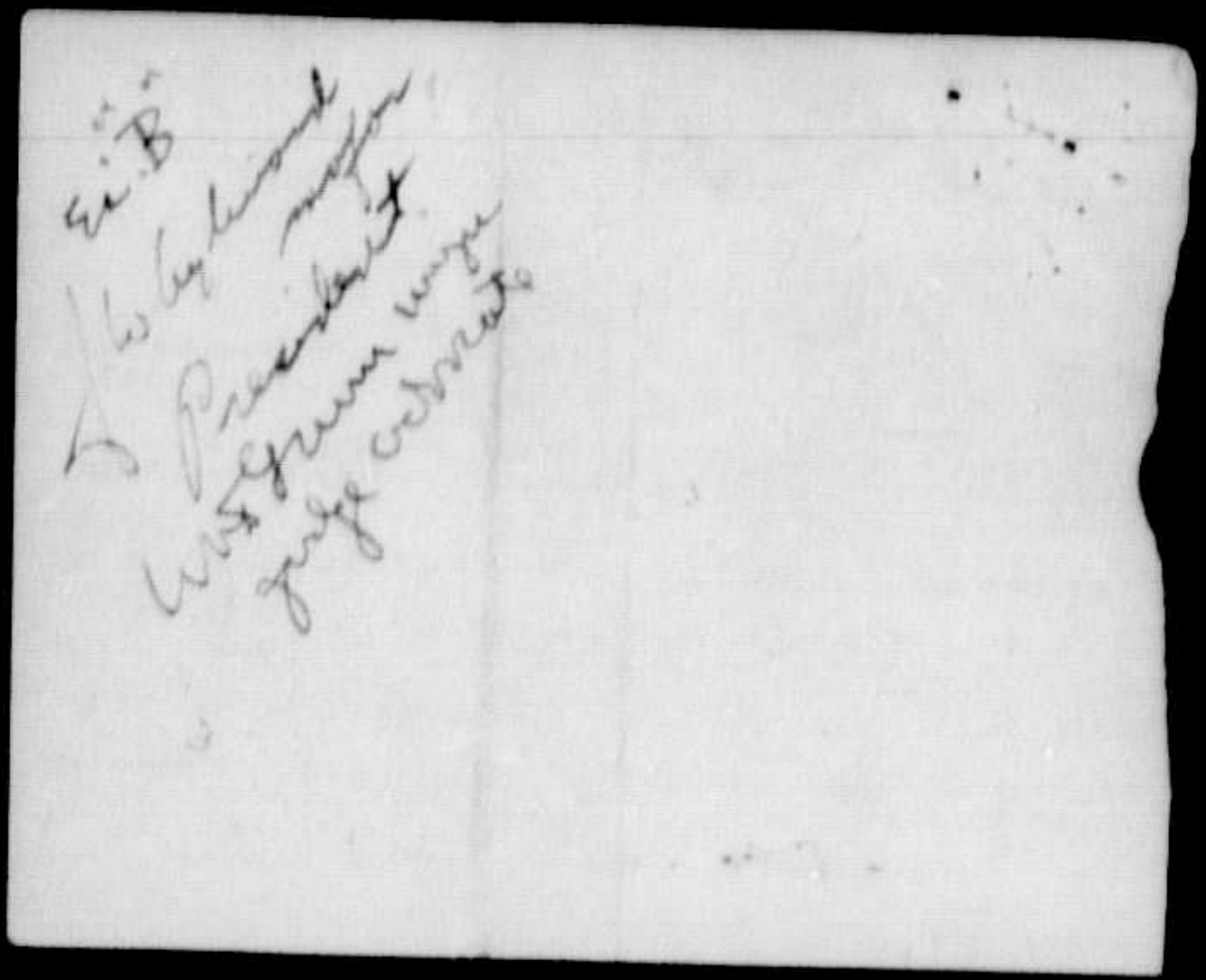
of No. 6 Provost Coy. at 2330 hrs. on 17 Nov. 43 (date)

at COVENTRY ST. LONDON (place) and will be forwarded to unit concerned together with A.F. B.252 giving particulars of the breach of Military Discipline.

[illegible] Rank

Exhibit "E" [illegible]

C.M.H.Q. 1000:123
40/P&S/1339 (11/42)



ABSENTEE REPORT

Squadron / Battery / Company: 15 Cdn Fd Amb RCAMC

14 Nov 43 19

REGL. No.	RANK AND NAME	WHEN ABSENT	HOUR OF RETURN	IN WHAT STATE	REMARKS
A55284	Cpl Owens A M	1700 hrs 14 Nov 43	2210 hrs 19 Nov 43	Sober & Properly Dressed	

Ex. Wht "A"
J. S. Kelly
Officer taking Summary

M. F. B. 273
150M—4-41 (34)
H. Q. 1772-39-446

J. M. Daniels Orderly-Sergeant

CHARGE

Army Form B 252
(See King's Regulations)

15 Cdn.Fd. Ambulance RCAMC Regiment

Battery
Squadron
Troop or
Company

CHARGE against No. A-55284 Rank Cpl.

Name OWENS, A.M.

Place LONDON Date of Offence 17 Nov 43

OFFENCE (1). W.O.A.S. absent without leave from ? -- until checked by the Cdn.Provost Corps and issued with Special Pass No.2354 at 2330 hrs 17 Nov43 on Coventry St, London.
(2). Having in his possession a document purporting it to be a genuine leave pass, well knowing it to be false. Same time, same date, same place.
(3) Improperly Dressed i.e. He had the hooks and one button of his battle dress blouse open at the neck, exposing a collar and tie.

Names of Witnesses :—

FOR OFFICER COMMANDING
No. 6 PROVOST COY.

K-85276 L/Cpl. Horton,L.A.G. Cdn.Provost Corps

G-48749 L/Cpl. Doyle, V.L. Cdn.Provost Corps.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Exhibit "C" [illegible]

Adjutant.

P.T.O

R4889 Wt.W21972/580 2,000,000 7/41 K & H., Ltd. G607/47

Statement of **EVIDENCE** in the case of

A-55284 Cpl. OWENS, A.M.

1st Cdn. Fd. Ambulance, R.C.A.M.C.

Sir: At LONDON at about 2330 hrs 17 Nov 43, I was on patrol duty on COVENTRY St., in company with L/Cpl. Doyle, V.L. when I saw the a/m soldier.

I approached him and requested to see his pass. Owing to the scarcity of light, it was difficult to observe the pass clearly. I noticed that he was improperly dressed i.e. He had the hooks and one button of his battle dress blouse open at the neck exposing a collar and tie. In accordance with C.A.R.O. 2363 para.20(e) I retained his pass(which is attached hereto) and issued him with special Pass No.2354.

I informed him that a charge of being improperly dressed would be forwarded to his Officer Commanding and ordered him to return to his Unit on the first available train.

On returning to our Coy.H.Q. we examined the pass and noticed that it had been altered. The a/m N.C.O.'s Unit was contacted by telephone and we were informed that he had been absent since the 14 Nov 43.

LONDON
17 Nov 43

L.A.G. Horton. L/Cpl.
(K-85276 Horton, L.A.G.)

Sir: I have read over and corroborate the above statement.

REMARKS

London
17 Nov 43

V. L. Doyle L/Cpl.
(G.48749 Doyle, V.L.

Exhibit D
J. W. Daniels
Sergeant
Witness upon
duly sworn

15th Cdn Fd Amb
In the Field
21- 11- 43.

Summary of evidence in the case of A-55284 Cpl. OWENS, A.M. 15th Cdn Fd Amb, 4th Cdn Armd Div, a soldier in the Canadian Army Overseas charged with:-

ABSENTING HIMSELF WITHOUT LEAVE

First Charge
AA Sec 15 (1)

In that he
in the Field on 14 Nov 43 absented himself without leave from 1700 hours 14 Nov 43 till 2330 hours 17 Nov 43. (Total absence 3 days 6 hours 30 mins).

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

2nd Charge
AA Sec 40

In that he
in the Field on 17 Nov 43 after being issued with a Special Pass by K.85276 L/Cpl. Horton, L.A.G. of No. 6 Cdn Provost Coy at 2330 hours 17 Nov 43 to return to his unit immediately, failed to do so and did not return until2210 hours 19 Nov 43.

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

3rd Charge
AA Sec 40

In that he
in the Field on 17 Nov 43 was in possession of a document purporting to be a genuine pass well knowing that it was not genuine.

LOSING BY NEGLECT HIS REGIMENTAL NECESSARIES

4th Charge
AA Sec 24(2)

In that he
in the Field between 12-11-43 and 19-11-43 lost his service Book, complete (MBM 1 (Parts 1, 2 and 3.)

ABSENTING HIMSELF WITHOUT LEAVE

Fifth Charge
(Alternative)
AA Sec 15 (1)

In that he
in the Field on Nov 14, 1943 absented himself without leave from 1700 hours 14-11-43 until 2210 hours 19-11-43. (Total absence 5 days, 5 hours & 10 mins).

The Commanding Officer directs that all evidence will be taken under oath.

First Witness:

A.62109 Sgt. DANIELS, J.W. Sec., Sgt. B Coy, 15th Cdn Fd Amb being duly sworn states.

On Nov 14, 1943 it was my tour of duty as orderly Sergeant. Cpl. OWENS, A.M. had been issued a 48 hour pass from 1700 hours 12-11-43 until 1700 hours 14-11-43. This pass was due in at 1700 hours. 14-11-43. Cpl. OWENS, A.M. not having checked in at this time was reported absent. This was entered on the absentee report which I tender herewith as evidence and which is marked "Exhibit "A"". On Nov 19, 43 during my tour of duty as orderly Sergeant, Cpl. OWENS, A.M. checked into me at 2210 hours.sober and properly dressed, reporting the loss of Service Book, complete, and pass. Cpl. OWENS, A.M. was placed under open arrest.

J.W.Daniels
A.62109 Sgt. Daniels, J.W.

The accused declines to cross-examine the witness.

(Cont'd on Page 2.)

2nd Witness — I certify that in my opinion, the attendance of L/Cpl. Horton, L.A.C. owing to the exigencies of the service is not readily procurable; a written statement of his evidence, signed by him, has been read to the accused and is attached, hereto, as Exhibit "C".

.....
(J.K. Kelly) Captain,
Officer taking Summary.

3rd Witness — I certify that in my opinion, the attendance of L/Cpl. Doyle, V.L. owing to the exigencies of the service is not readily procurable; a written statement of his evidence, signed by him, has been read to the accused and is attached, hereto, as Exhibit "C".

.....
(J.K. Kelly) Captain,
Officer taking Summary.

To the Accused; — Do you wish to make any statement or 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 evidence you give will be taken down in writing and may be used as evidence.

The Accused — I had a reason for going A.W.L.
My Pay Book, Complete, pass and £1-10-0 and address book were removed from my coat pocket while asleep in a club.

(This statement was not made under oath.)

Rules of procedure 4 (c),(d),(e),(f),(g) have been complied with. Taken before me in the Field this twenty-first day of November 1943.

HQ 15th Cdn Fd Amb

(J.K. Kelly) Captain,
Officer taking Summary.

No. A55284 Name OWENS Albert Martin | Sqn., Battery, or Company HQ | Corps RCAMC | Date of enlistment 2-6-41 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 122) 500M—11-40—50285 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. One | Signature O.C. Company, etc. ????? Lieut | 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
	1941								
V'cartier	9 Oct	A/L/Cpl		Sec 15(1)AA AWL from 0801 hrs 9-10-41 to 0801 hrs 12-10-41 (Absent 3 days)	Sgt Meyers Cpl Mains	7 days C B	13-10-41	Lt Col W E Mace	Forf 3 days pay
	1943								
Field	14 Jul	Cpl		Sec 15(1) AA AWL from 2400 hrs 14 Jul 43 to 1800 hrs 16 Jul 43 (Absent 1 day 18 hrs)	Sgt Meyers Sgt Oliver	Admonished	17Jul43	Lt Col W E Mace	Forf 2 days pay

Certified true Copy: [signature]
for (C D S Leef) Lt Col
Officer Commanding
15 Cdn Fd Amb RCAMC

Certified true copy
for CDS Leef Lt Col

Entered
[illegible]
Presented
[illegible]

(P.T.O.)

Entitled to ✕ / J.W. Clay Lieut. mayor / W.R. Speers Wpg police magistrate

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

Number	Rank	Name	Regiment (or unit)
A.55284	Corporal	OWENS, A.M.	15 Cdn FdAmb RCAMC

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, 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 or appointment	
For	AWL	1 times	AWL	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.~~

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 Sch. 7d 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 Air Force nil days in military custody, making a total of nil days in custody, of which nil days were spent in hospital. 10 days spent in hosp

5. The present age of the accused according to his record of service is attestation paper is May 31 1907

6. The date of his ~~accession~~ attestation specified in his ~~record of service~~ attestation paper is 2 June 41

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

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 a 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 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 not~~

..... dated nil ....., ~~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:—

1-9-41 Date of promotion.

In the rank of A/L/Cpl. 6 months ~~years~~

In the rank of A/Cpl. 7 months ~~years~~

In the rank of Cpl. 1 years. 1 month

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
	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 ~~29th~~ 29th day of November 1941

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.

63. P.

Gen. Ovey, W. W.

O. H. M. S.

M. F. B. 270
[illegible]M-12-40 [illegible]-69-70
H.Q. 1773-[illegible]-67

B-25379, Gnr. Ovey, D.M.
3 C.A.R.U.

63

63P

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 FIFTH day of OCTOBER, 1942. Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of "C" 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; [redacted]

* 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. [redacted]

PROCEEDINGS REVIEWED.

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	F.J. GILMOUR, RCA,	H.Q., C.R.U.

Members.

Rank.	Name.	Regiment.
CAPTAIN	J.B. NASH, RCA,	2 C.A.R.U.
LIEUT.	S.A. TURNER, RCA,	2 C.A.R.U.
LIEUT.	Waiting Member from	3 C.A.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 [signature] Brigadier,

Commanding "C" Group, 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-25379 GNR. OVEY, D.W. (R.C.A.) 3 C.A.R.U.	FIRST CHARGE A.A. Sec. 15(1)	Guilty	Guilty.	Confirmed Yes
	SECOND CHARGE A.A. Sec. 24(2)	Guilty with the exception of the battledress blouse	Guilty with the exception of loss of Battle Dress blouse.	
			To undergo detention for 130 days and to be put under stoppages of pay until he has made good the sum of £0/6/2 in respect of loss of kit of the articles listed in the 2nd charge with the exception of Battledress blouse. 6/10/42	
	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 sir.

(Signed) J. Stewart Brigadier, (Signed) T. Gilmour Maj

Commanding "C" Group Cdn Reinf 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 6th 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)

were duly sworn.

* Omit if not applicable.

Signed this 6th day of October 1942.

T. Gilmour Maj

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 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 7th day of October 1942.

J. Stewart Brigadier

Commanding Officer.

J. G. STEWART, Brigadier,
Commanding "C" Group,
Cdn. Reinforcement Units.

Promulgated and extracts taken in the case of B-25379 Gnr. Ovey, Donald Wallace

(a) (Dated) D.O. 210. d 8 Oct 42 (Signed) [signature] Capt
Records Officer, No.3. CARU

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. 28092/1356 70m 2/41 W. & Co., Ltd. Gp. 745/2

CHARGE SHEET

The accused B-25379, Gunner Donald Wallace OVEY, "P" Training Wing, No. 3 Canadian Artillery Reinforcement Unit, R.C.A., a soldier of the Canadian Army Overseas, is charged with:-

1st Charge
Section 15(1)
Army Act

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

In that he

at Huron Camp, Bramshott, Hants., absented himself without leave from 0800 hrs. 22 June 1942, until reporting to the Guard Room, Huron Camp, at 2310 hrs. 30 September 1942. Total absence 100 days, 15 hrs., 10 min.

2nd Charge
Section 24(2)
Army Act

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

In that he

at Huron Camp, Bramshott, Hants., on 2 October 1942 was deficient of equipment, clothing and regimental necessaries to the value of One Pound, Six Shillings and Eleven Pence (£1-6-11), which sum is 75% value of the vocabulary price of such articles which amounted to One Pound, Fourteen Shillings, Eleven Pence, Half-penny (£1-14-11½), in accordance with C.A.(O) R.O. No. 1396, as under:-

		100% value	75% value
Badges, cap	1	£0- 0- 5½	£0- 0- 4
Battle Dress Blouse.	1	1- 7- 8	1- 0- 9
Brushes, hair	1	1- 1	- 9¼
Holdall	1	- 9	- 6¾
Vests, P.T.	1	1- 6	1- 1¼
Eyeshields A/G	6 @ 4½ ea	2- 3	1- 8¾
Ointment A/G	tins 1	- 9¼	- 7
Wallet A/G	1	1- 5½	1- 0⅛
	Total	£1-14-11½	£1- 6-11

(W.E. Huckvale) Colonel
Commanding Officer
No. 3 Cdn. Arty. Rein. Unit.

Huron Camp,
Bramshott, Hants.,
5 Oct 1942.

To be tried by Field General Court Martial

Brigadier,
Commanding "C" Group, Cdn. Reinf. Units.
(Convening Officer)

Bordon, Hants.,
5 Oct 42.

Huron Camp
No. 3 C.A.R.U.

6 October 1942

This is to certify that I have examined B-25379 Gnr. OVEY, D.W. on this date and find him fit to undergo trial by Court Martial.

(W.R. Little) Capt.
Medical Officer
No. 3 C.A.R.U.

Trial of B-25379, Gunner D.W. Ovey, #3 C.A.R.U.
In the Field - 6 Oct 1942.

The Order convening the Court - Charge Sheet, Summary of Evidence + 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 - Major J. Greenwood 3 C.A.R.U.
Defending Officer - Major J.R. McLeod 3 C.A.R.U.
at 1500 hours the trial commences.
The order convening the court is read and the accused having no objection to any of the officers detailed, the President + members are duly sworn.
President: Major T.J. Gilmour R.C.A.
Members: Capt J.B. Nash 2 C.A.R.U.
Lieut S.A. Turner 2 C.A.R.U.
Two officers under instruction are duly sworn viz Major M.M. Wyndham R.C.E.C. and Lieut J.F.M. Ross 3 C.A.R.U.
The accused is arraigned as per R.P. 112.
R.P. 34(a) is complied with.
R.P. 35(B) complied with
First Witness for Prosecution } A-57034 L/sgt Samuel Sterling duly sworn states:
I am N.C.O. i/c Kit Stores at #3 C.A.R.U. when I checked the kit of the accused on 2nd of October he told me that the Battle dress blouse was at the tailors for repairs.
No Cross exam. - no questions by Court
R.P. 83(b) complied with.
The Prosecution is Closed.

The accused is informed of his rights as per R.P. 40A.

(over)

Pres. to Accused:

Q. "Do you apply to give evidence yourself as a witness?" A. "Yes."

Q Do you intend to call any other witnesses in your defence? A. No.

First Witness for defence } The Accused, B25379 Gunner D. W. Ovey 3 CARA duly sworn states: – I reported to Sgt Stirling that my battle dress blouse was at the unit laundry to be cleaned – this is a different place from the tailor shops. I was taken under escort 2 or 3 times to the laundry to try to retrieve my blouse & it was not there.

Cross examined by the Prosecutor

I did not get a chit when I took my blouse to the laundry that was not the practice. They took my name down in a book but at the present time they only have the records back as far as July 7/42. I took my blouse in to the unit laundry to be cleaned between the 15 & 20th June 1942. I do not recall the name of the clerk in the stores to whom I turned in my blouse to be cleaned.

Questioned by the Court: I deny that I told Sgt. Stirling that I sent my blouse to the tailor I told him I took it to the laundry.

R.P. 83(b) complied with.

At 1540 the Court adjourned to enable the prosecutor to call the Laundry Clerk.

at 1600 hours the Court re-opened and the Prosecutor announced that records of laundry turned in for June last were not available as at that time the practise was to destroy the records every three months.
The Court announce that they do not find the accused guilty of loss by neglect of the battle dress blouse.
~~President to~~
The summary of evidence is read & attached to the proceedings.
Major J. Greenwood 3.C.A.R.U sworn produces A.F.B. 296 & M.F.M. 6 relating to the accused and states that they are true extracts from the regt'l records. No Cross exam.
These 2 documents are read & attached to the proceedings.
Pres. to Accused, Q. Do you wish to make any stmt in mitigation of punishment?
A. "No." Q. Do you wish to give evidence yourself as to character or to call any witnesses as to character?
A. Yes one witness.
Lt-Col Charles E. Woodrow commanding "P" training wing No 3 C A R U duly sworn states:- "From the time of its inception March 1941 until the end of July 1942 I was O.C. 53 L.A.A Bty. Prior to that I was Bty Capt of the 26/53rd Field Bty. Gnr Ovey was a member of the 26/53rd Bty from the time it was formed in April 1940.- until he transferred to the 53 L.A.A. Bty in March 1941. (over.)

I knew him during the whole of that time. In the Fd. Bty he had a couple of minor crimes of A.W.L. of about one day. In the Light A.A. Bty he was up for Bty Office twice for being late for parade. Apart from this he was a good soldier - well behaved. We were on A.D.G.B. sights for 6 months at an important fighter drome - he was employed as a telephonist with a reasonable amount of responsibility and carried out his duties well. Before I left the 53 Bty he went to hospital with an infection in his leg & since then I know nothing of his activities.

R.P. 83(b) Complied with.

The defending officer reads a written statement in Mitigation which is handed in & attached to the proceedings.

The Court is closed to consider sentence

J. Seymour Major
President.

1

Statement in mitigation of punishment in the F.G.C.M. of B25379 Gnr Ovey L.W.

The accused enlisted on 13 mar. 1940 and served with the same unit with which he enlisted until he was discharged from No 7 Can. Military Hospital on 5 May 1942. after having been in hospital from 11 Feb. 1942. During this time the accused gave good service in his unit and his M.F.M.6 indicates no serious crime and no detention.

After being discharged from hospital the accused was excused by the M.O. from wearing boots and anklets and for this reason was not able to ~~cof~~ complete his T.O.E.T.S. in foot and rifle drill and thus qualify to return to his Unit. He became discouraged and overstayed a weekend leave and continued absent until he returned voluntarily on 30 Sep 1942.

It is most unlikely that the accused would have absented himself if he had remained with his unit. The fact that he spent the period 11 Feb 1942 – 5 May 1942 in hospital and was unable to wear boots and anklets due to the condition of his leg during the period 5 May – 22 June when he absented himself, shows that his physical condition was directly responsible.

"G" [illegible]

The accused is still suffering from the disability and it is considered that this condition and the part that he gave satisfactory service from the date of enlistment as indicated by the character awarded by his ex Commanding Officer should be considered in awarding punishment.

J. H. McLeod major.
Sentencing Officer

6. Oct. 1942.

SUMMARY OF EVIDENCE IN THE CASE OF
B-25379, Gunner OVEY, D.W.,
"A" Battery, "P" Training Wing,
No. 3 Cdn. Arty. Rein. Unit.

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

1st Witness for Prosecution

Capt. J.M. Hockin, R.C.A., Pres. of Court of Inquiry.
Lieut. A.H. Ackerman, R.C.A., Member of Court of Inquiry.
Lieut. J.H. Jardine, R.C.A., Member of Court of Inquiry.

I, Capt. J.A. Biggar, R.C.A., the officer taking this Summary of Evidence, certify that owing to the loss of time and expense involved, the attendance of these witnesses cannot, in my opinion, be readily procured. J.A. Biggar Capt.

I now produce and read to you, a certified true copy of the Declaration of a Court of Inquiry, held at Huron Camp, Bramshott, on 16 July 1942, and which declared you to be absent without leave from 0800 hrs. the 22nd of June 1942, marked "A" and attached hereto.

The accused does not require the presence of these witnesses for the purpose of cross-examination.

2nd Witness for Prosecution

P-28101 Sgt. McWilliam, F., 69th Tank Transporter Coy., R.C.A.S.C., having been duly sworn, states:-

"Sir. On the night of 30th September, 1942, I was Guard Commander of the Main Gate Guard, Huron Camp, No. 3 C.A.R.U. On the same night at 2310 hrs., Gnr. Ovey, D.W. reported to the Guard Room and asked to be put in a cell. He told me he had been away for approximately 100 days. Without further question, I placed him under close arrest, reporting it to the N.C.O. i/c Regt'l Police the following morning."

P28101 F. McWilliam Sgt

The accused declines to cross-examine this Witness.

3rd Witness for Prosecution

A-57034 L/Sgt. Stirling, S., N.C.O. i/c Kit Stores, No. 3 C.A.R.U., having been duly sworn states:-

"On the 2nd of October, 1942, I re-examined the kit of Gnr. Ovey, D.W. and found him to be deficient of articles to the value of £1-14-11½, which at 75% of the vocabulary price amounts to £1-6-11, in accordance with C.A.(O) R.O. 1398, as per list I am now presenting." S. Stirling L/Sgt A-57034

This list is marked "B" and attached hereto.

The accused declines to cross-examine this witness.

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

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

Taken down before me in the presence and hearing of the accused this 3rd day of October 1942, at "P" Training Wing, No. 3 Cdn. Arty. Rein. Unit.

J.A. Biggar
(J.A. Biggar) Capt., R.C.A.
No. 3 C.A.R.U.

RECORD of the Declaration of a Court of Inquiry assembled at Huron Camp, Bramshott, Hants. on the 16th day of July 1942 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-25379, Gunner OVEY, D.W.

DECLARATION

The Court declare B-25379 Gnr. OVEY, D.W. of No. 3 C.A.R.U., illegally absented himself without leave from Huron Camp, Bramshott, Hants., at 0800 hrs. on the 22nd day of June, 1942, and that on the 13th July, 1942, he was deficient, and that he is still deficient of the following articles:-

Articles	No.	Value £	s	d	Articles	No.	Value £	s	d
Anklets, web	1		2	6½	Denim trousers prs	1		8	9½
Badges, cap	1		4		Razor, safety	1		1	4½
Bags, kit	1		3	11½	Shorts, flannel	2		13	9
Battle Dress Blouses	2	2	1	6	Shoes, canvas prs.	1		6	7½
Battle Dress Trousers	2	2	1	10½	Socks prs	3		3	9
Boot laces prs	2			1½	Spoon, table	1			3½
Boots ankle prs	2	1	12	3	Towel, hand	2		1	6½
Braces	1			10½	Vests, woolen	2		7	7½
Brasses, button	1			1½	Vests, P.T.	2		2	3
Brushes, boot blacking	1			6	Vests, cotton	2		2	3
" , polishing	1			6½	Shorts P.T. prs.	2		2	10½
" , hair	1			9½	Drawers, cellular prs.	2		2	0½
" , button	1			6	Attachments, brace	2		2	7½
" , cloth	1			9½	Bags, ration	1			2
" , tooth	1			3½	Belt, waist web	1		5	10½
Cap comforter	1			10½	Bottle, water	1		2	2½
Cap, field service	1		2	9	Braces, L&R	2		5	7½
Greatcoat, drab	1	2	17	9½	Carrier W/Bottle	1			2½
Comb, hair	1			1½	Cover, messtin	1		2	0½
Discs, identity	3			1	Haversack	1		7	9½
Drawers, woolen prs	2		7	10½	Helmet, steel	1		7	6½
Dressing, first field	1			9½	Packs	1		7	10½
Forks, table	1			3½	Straps, shoulder	2		5	0
Gloves, woolen prs.	1		1	11½	Straps, web support	2		1	7½
Holdall	1			6½	Tins, mess	1		2	9½
Housewife	1			5½	Respirator A/G complete	1		15	9
Jacket, sweater	1		5	0½	Wallett A/G	1		1	0½
Knife, clasp	1		3	11½	Caps A/G	1		17	8½
Knife, table	1			7½					
Denim blouse	1		8	9½	Total		£18	1	6½

Names of President and Members:

President:- Capt. J.M. Hockin, RCA, #3 CARU
Lieut. A.H. Ackerman, RCA, #3 CARU
Lieut. J.H. Jardine, RCA, #3 CARU

Signed at Huron Camp, Bramshott, this 21st day of July, 1942.

Signature of Commanding Officer Signed; (W.E. Huckvale) Colonel

Certified true copy 5 October 1942

Signature of Officer having custody of original record.
(G.F. Boyer) Lieut., RCA

No.3. Canadian Artillery Reinforce.Unit.
Canadian Army (Overseas) 2-10-42

B-25379 Gnr.Ovey D.W.

LIST OF DEFICIENCIES

			100% £ s. d.	75% £ s. d.
Badges,cap	1		- 5½	- 4
Battle-dress Blouse.	1		1 -7 - 8	1 - 0 - 9
Brushes,hair	1		1 - 1	- 9¾
Holdall	1		- 9	- 6¾
Vests P.T.	1		1 - 6	1 - 1½
Eyeshields A/G.	6	@ 4½d.ea.	2 - 3	1 - 8¼
Ointment A/G. tins	1		- 9½	- 7
Wallet A/G.	1		1 - 5½	1 - 0¾
		Total	£ 1 - 14 - 11½	£ 1 - 6 -11

I hereby certify that I have examined the kit of B-25379 Gnr.Ovey D.W.
And find the above mentioned list of deficiencies.
Dated this 2nd. day of October 1942.

"B"

Signed..Sterling P. L/Sgt A-57034
N.C.O.i/c. Kit-stores, No.3.C.A.R.U.

No. B 25379 Name OVEY, D.W. Sqn., Battery, or Company — Corps R.C.A. Date of enlistment 13-3-40 G.C. Badges — Service or Proficiency Pay — M.F.M. 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet 14-8-40 No. and date of last drunk N11 — 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
Original sheet destroyed 20/8/41 on completion of six months service w.e.f. 13-9-40									
Leipsig	15-9-40	Gnr.		WOAS Failed to appear on parade. A.A. 15(1)		10 days C.B. Fined 10 D.P. FRI 149(2)	19-9-40	Major Medland	
"	23-11-40	"		WOAS Absent without leave one day. A.A. 15(1)		3 days C.B.	25-11-40	Major Harris	Ft. 1 D.P. FRI 149(1)(a)
Aldershot	5-3-41	"		WOAS A.W.L. 1 day. A.A. 15(1)		10 days C.B.	7-5-41	Major Flewry.	Fts 1 D.P. FRI 149(1)(a)
Colchester	15-4-41	"		WOAS Failed to appear on parade. A.A. 15(1)		7 days C.B.	16-4-41	Major Woodrow	

(P.T.O.)

Place	Date of offence	Rank	Cause of drunkenness	Offence	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Colchester	11-5-41	Gnr.		WOAS Failed to appear on parade. A.A. 15(1)		7 days C.B.	12-5-41	Major Woodrow.	

Certified True Copy of Original Sheet. 5-10-42

J.A. Biggar

(J.A. Biggar) Capt. & Adj.
"p" Tr'ng Wing, #3 CARU

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-25379	Gunner	OVEY, D.W.	No. 3 Cdn. Arty. Rein. Unit.

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, R.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	A.A. Sec. 15 (1) times	Nine 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. The accused has not been previously convicted, or

[redacted]

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

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

5. The present age of the accused according to his [redacted] attestation paper is 23 years 44 days as of 5 Oct 42

6. The date of his [redacted] attestation specified in his [redacted] attestation paper is 13 March 1940

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs 50 days as of 5 Oct 42

8. The accused is entitled to deferred pay or gratuity in respect of 2 years 50 days as of 5 Oct 42 service.

9. The accused is entitled to reckon 2 years 50 days as of 5 Oct 42 service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration [redacted]

[redacted]

[redacted]

(*18250) Wt.15882/144 125,000 6/41 A.&E.W.Ltd. Gp.498

"G" 7/9

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-25379 Rank Gunner Name OVEY, D.W. of No. 3 C.A.R.U. 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 6th day of October, 1942

(A.M. Parker) Capt. & Records Officer
No. 3 C.A.R.U.

[redacted]

Date of Promotion.

In the rank of ..... years.

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 corrected accordingly.)

LIST OF WITNESSES

For Prosecution

Capt. J.M. Hockin, R.C.A., No. 3 C.A.R.U.
Lieut. A.H. Ackerman, R.C.A., 5th L.A.A. Regt., R.C.A.
Lieut. J.H. Jardine, R.C.A., No. 1 C.G.R.U.

P-28101 Sgt. McWilliam,F., 69th Tank Transporter Coy., R.C.A.S.C.

A-57034 L/Sgt. Stirling, S., No. 3 C.A.R.U.

For Defence

HURON CAMP.

5th Oct.,42.

Commanding Officer
No. 3 C.A.R.U.

F.G.C.M.

1. Reference my pending trial by F.G.C.M., it is respectfully submitted that counsell be appointed to defend me.

2. If possible, I should like Major McLeod J.H. R.C.A., to act as my Defending Officer.

3. Respectfully submitted.

.....
B-25379 Gnr. (Ovey D.W.)

C.A.R.U.
10 OCT 1942

YY-14

PIE QUENS E.P.

SCHEDULE.

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

Accused: Y-48037 Pte Ernest Patrick Owens, No 15 Coy C.F.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 15(1)	Guilty	Guilty	
2nd	AA 41	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 in loss of kit see RP 44 fn 6.)

~~Nil~~ ~~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.)

Nil Time in confinement awaiting present trial—a total of 85 days, of which 17 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 fourteen days and to forfeit all ordinary pay for a period of fourteen days

(Sgd) H. H. Waugh Capt — Judge-Advocate, if any.
6 Dec 43 — Date awarded.
(Sgd) [illegible] — President. (RP 49, 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)

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

Date 27 Dec 43

(Sgd) C. E. E. Jones Colonel
Commanding Canadian Forestry Corps
Confirming Officer.

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

Accused.	Date.	Signature of Offr.
Y. 48037. Pte Patrick Owens.	27th Dec. 43.	J. C. L. Armstrong Capt & Adjt No. 15 Coy C.F.C.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CFA86 (In lieu of AF A37) 40/P.S.R./1808 (2864)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Colonel C E E Jones Comd C.F.C. dated 26 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) 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.
Y-48037	Pte	Proceedings Reviewed	Ernest Patrick	Owens	No 15 Coy C.F.C.

Chas Canada 3 Jan 44

Reviewing Officer, C.F.C. H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Scotland on (date(s)) 6, 7 and 8 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 fnn 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) Le Transcripe

(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 1030 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.~~ Do you object to Lt Kennedy RCA as shorthand writer? Ans No. The shorthand writer is sworn.(1) Le Transcripe

(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) Le Transcripe

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 187, 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. N. Dowler, O.B.E.	Bde Trg	HQ C.F.C.
Member	Major	O. V. Maude-Roxby, M.C.	No 9 Coy	C.F.C.
Member	Capt	H. D. Baxter	No 21 Coy	C.F.C.
Judge-Advocate	Capt	H. H. Waugh	Can Int	C.M.F.
Prosecutor	Major	J. T. Shillington		HQ C.F.C.
Defending Offr	Capt	F. L. Berry		15 Coy C.F.C.

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 Dir p 33.)

A8. The accused ~~stands~~ before arraignment make(s) (no) ~~objection~~ 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 ~~duly~~ 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. Le Transcripe

(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 or 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. W.H.W.

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 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 first 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 M, 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) W.H.W.
(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 second 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 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) second charge. See transcript
(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. See transcript Do you intend to call witnesses on your behalf ? Ans Yes Are they witnesses as to character only ? Ans Yes
(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 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.(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 N and Ex O 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 (by defending counsel) (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) See transcript for variation as per RP 71 D.
(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) 71(D)
(1. When several accused tried separately see RP 74. 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.

B-109

CHARGE SHEET

The accused, No. G-48037 Private Ernest Patrick Owens, No.15 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

at Kiltarlity, Inverness-shire, Scotland on 14 September 1943 absented himself without leave from 1330 hours to 1730 hours on the said date (time absent 4 hours).

Second Charge
Sec 41
Army Act

WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE that is to say an act with intent to impair the efficiency of machinery used in the performance of essential services contrary to Defence (Gen) Regulations, 1939, Regulation 2b(1)

In that he

on Tuesday, 14th day of September 1943 between 1600 hours and 1930 hours at the Canadian Forestry Corps Sawmill, Allarburn, Parish of Kiltarlity, Inverness-shire, Scotland, did unlawfully cut several balatta transmission belts and damage three power plants in the said sawmill with intent as aforesaid.

Remanded to C.C. No.5 District, C.F.C.

In the Field
11 Nov 1943

(D.A.Norman) Major
O.C. No.15 Coy. C.F.C.

Remanded for Field General Court Martial

In the Field
11 Nov 1943

(N.C.Ferguson) Lt.-Col.
O.C.No.5 District C.F.C.

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

In the Field
26 Nov 1943

(C.E.F.Jones) Colonel
Commander,
Canadian Forestry Corps.

W.H. Waugh Capt JAG 5

Proceedings of a FIELD GENERAL COURT MARTIAL held at H.Q., No. 15 Coy Canadian Forestry Corps, in the Field in Scotland, on Monday, the 6th day of December, 1943, in the case of No. G-48037 Pte. Ernest Patrick OWENS, No. 15 Coy C.F.C.

President:- Lt.-Col. J.H. Dunlop, O. i/c Mil.Trg. H.Q., C.F.C.

Member:- Major O.V. Maude-Roxby, M.C., No. 19 Coy C.F.C.

Member:- Capt. G.D. Baxter, No. 28 Coy C.F.C.

Judge-Advocate:- Capt. W.H. Waugh, General List.

Waiting Member:- Major K.W. Carlisle, No. 10 Coy C.F.C.

Prosecuting Officer:- Major J.T. Shillington, H.Q., C.F.C.

Defending Officer:- Capt. F.S. Perry, No. 18 Coy C.F.C.

Defending Counsel:- Thomas Hepburn Burns, Esq., Solicitor. Dingwall, Law Agent

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Officers under instruction:-
Major K.W. Carlisle, No. 10 Coy C.F.C.
Capt. R.K. Adamson, No. 15 Coy C.F.C.
Lieut. R. Crabtree, No. 10 Coy C.F.C.
Lieut. J.C.L. Akin, No. 15 Coy C.F.C.
Lieut. D. Gray, No. 27 Coy C.F.C.
Lieut. G.H. Rennie, No. 18 Coy C.F.C.
Lieut. R.M. Calder, 5 Dist H.Q., C.F.C.

Court Stenographer:- G-45160 Sgt. Henneberry, H.J., J.A.G. Branch, C.M.H.Q.

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 R.P.22 & 23.

The accused is brought before the Court.

At 10.30 o'clock the trial commences.

J.A. I must make an explanation to both of you accused at the present moment. We are at the moment going to read the ~~confirming~~ orders to both of you and ask you whether you object to any members of the Court or the shorthand writer. Do you object to G-45160 Sgt. Henneberry, H.J. of C.M.H.Q. as shorthand writer on your trial?

Both accused answer "No, Sir."

Shorthand writer duly sworn.

The order convening the Court, (marked "A") in the case

plf

of G-48037 Pte. Ernest Patrick Owens, No. 15 Coy C.F.C. , is read by the President. The names of the President and members and Judge-Advocate are read over in the hearing of the accused, and they severally answer their names.

Pres. Pte. Owens, do you object to me or any of the officers whose names have been read over to you as members of the Court?

Ans. No, Sir.

The order convening the Court, (Marked "A") in the case of G-48055 Pte. Joseph Lawrence Hayes, No. 15 Coy C.F.C., is read by the President. The names of the President and members and Judge-Advocate are read over in the hearing of the accused, and they severally answer their names.

Pres. Pte. Hayes, do you object to me or any of the officers mentioned in this list?

Ans. No, Sir.

President, members and Judge-Advocate are duly sworn.

Officers under instruction are duly sworn.

J.A. With which accused will we proceed first?

Pros. I suggest, Mr. President, we proceed with the accused Owens.

J.A. Any objection by the Defending Officer.

Def. No objection.

Court proceeds with the trial of G-48037 Pte. Ernest Patrick Owens.

Accused Pte. Hayes and escort leave court room.

Prosecutor produces Medical Certificate that accused is fit to undergo trial by court-martial. EXHIBIT "C"

The Charge Sheet is signed by the President, marked "B" and annexed to the proceedings. EXHIBIT "B"

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

Q.1. Are you guilty or not guilty of the first charge against you, which you have heard read?

A.1. Guilty, Sir.

Q.2. Are you guilty or not guilty of the second charge against you, which you have heard read?

A.2. Not Guilty, Sir.

J.A. Pte. Owens, you have pleaded Guilty to the first charge. Do you understand the meaning of the first charge; it is a charge of A.W.L. for four hours. Also, I wish to point out to you that the defence in a trial in respect to a charge to which there is a plea of Guilty is different; that no evidence is taken before the Court; no witnesses appear to give evidence in respect to a charge on which you plead Guilty. The Summary of Evidence will be read, and the evidence from the Summary of Evidence is that which the Court will consider in respect to that particular charge. Also, you will be given an opportunity to make a statement on the charge, and the only evidence which can be adduced on that charge to which you have pleaded Guilty is to call evidence of character, and you may also make a statement in mitigation of punishment in respect of that charge, and

owing to the fact that there is a plea of Guilty that charge will not be disposed of first. We will proceed with the trial on the charge to which you plead Not Guilty, and it is only after that charge has been disposed of, the charge to which you have pleaded Guilty will be disposed of.

J.A.
Q.3. Do you understand that?
A.3. Yes, Sir.

Pres.
Q.4. 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?
A.4. No, Sir.

Opening Address by the Prosecutor.

Mr. President, Gentlemen of the Court. The Prosecution proposes this morning to produce witnesses who will testify that on September 14th at approximately 1 o'clock in the afternoon the Kiltarlity Mill, which is operated by Nos. 15 and 18 Coys of the Canadian Forestry Corps, was shut down for some minor repairs, and that the accused Pte. Owens was a member of the mill or yard crew. That during the period of the shut-down, Pte. Owens together with other soldiers disappeared from the premises, and that at approximately 3.30 in the same afternoon the mill was once again put in a running order and proceeded functioning in its normal way.

The accused, however, together with other soldiers did not return to work. Witnesses will testify that at 5.30 in the afternoon the mill was again closed down for the day; and that as some minor repairs had to be made to the motive power to the mill, a crew of two men, mechanics from General Workshops, stayed on the premises in order to make those repairs, and they will testify that including themselves, there were only three men on the property. They will testify that at approximately 6.30 o'clock the same afternoon they completed the repairs that were necessary to keep the mill in running order and left the premises, and that at the time that they left all of the machinery in the mill was in running order. At the time that the two mechanics left evidence will show that there was only one man left on the property; that man was the night watchman who was performing his normal duties.

Evidence will be introduced to show that at approximately quarter to 7 an officer and a couple of other ranks came to the mill in order to make some repairs to machinery upstairs - that is to the actual sawmill equipment itself, and that they were on the property from quarter to 7 until approximately a quarter after 7, and that during that time, or at least on their arrival, the only people on that property of the Kiltarlity Mill was this officer, the two other ranks that he brought with him, and the night watchman.

It will be shown, however, in the evidence that at approximately quarter after 7 the accused together with another soldier was seen to be leaving the property of the Kiltarlity Mill. Evidence will also be introduced to show that at approximately 6.30 the accused together with another soldier left the premises of a nearby pub, proceeding in the direction of the Kiltarlity Mill; and evidence will be introduced to show that at approximately 7.15 - 7.30 the accused were seen coming from the direction of the Kiltarlity Mill.

Evidence will be introduced to show the damage that was done at the Kiltarlity Mill and of injuries suffered by the accused Pte. Owens

The evidence is circumstantial, but as the Judge-Advocate will tell you, circumstantial evidence is good evidence. It is evidence from which a court is entitled to draw its own inferences.

I don't intent to elaborate any further in the opening address, but will proceed by calling the first witness.

1st Witness Prosecution — Lieut. G.C. Murphy, Officer i/c Kiltarlity Mill, No. 15 Coy C.F.C., being duly sworn, is examined by the Prosecutor:

Q. 5. What is your full name?
A. 5. Gerald Cecil Murphy.

Q. 6. What is your rank?
A. 6. Lieutenant.

Q. 7. And your unit?
A. 7. No. 15 Coy Canadian Forestry Corps.

Q. 8. What are your duties in No. 15 Coy?
A. 8. I am in charge of the joint mill operated by 15 and 18 Coy, ordinarily known as Kiltarlity Mill.

Q. 9. You refer to a "joint mill"; what kind of mill is it?
A. 9. The ordinary Canadian sawmill, Sir.

Q. 10. What does it produce?
A. 10. It produces lumber and mining supplies.

Q. 11. And for whom is it producing lumber and mining supplies?
A. 11. For the Ministry of Supply.

Q. 12. Of where?
A. 12. Of Great Britain.

Q. 13. And do you recall any events that took place on the 14th September?
A. 13. Yes, Sir.

Q. 14. Just a minute now; was the Kiltarlity Mill in production?
A. 14. Yes, Sir.

Q. 15. On the 14th September?
A. 15. Yes, Sir.

Q. 16. And on the 14th September it was producing the normal product as you just outlines a minute ago?
A. 16. Yes, Sir.

Q. 17. You say you recall certain events that took place on September 14th; will you please relate these events to the Court?
A. 17. Well, Sir, on September 14th, immediately after resuming operations after lunch-hour we unfortunately had a breakdown which necessitated repairs being made which took until 3.00 o'clock. During that time the men in the operation were put to work at various jobs in order to keep them busy and to try and keep things straightened out so as not to embarrass the other operations of the coys. When we were ready to resume at 3.00 o'clock we found that several men had disappeared. On investigation --

Q. 18. When you say "Disappeared" what do you mean - from where?
A. 18. From the mill, in other words they were not ready to resume their normal work when we started up at 3.00 o'clock.

Q. 19. And who were those men?
A. 19. The two accused and two others.

Q. 20. Yes; at the moment we are just dealing with one accused, the accused Pte. Owens. Will you look around this court-room and please indicate if Pte. Owens is present?
A. 20. Yes, Sir.

Q. 21. Can you identify him?
A. 21. Yes, Sir.

Q. 22. Where is he?
A. 22. Seated with his escort nearest to the Defending Officer.

Q. 23. You say that Pte. Owens together with other soldiers had disappeared from off the premises, is that correct?
A. 23. Yes, Sir.

Q. 24. Carry on, please.
A. 24. I was naturally pretty occupied with the main job of resuming operations, but I also ordered the mill sergeant to try and find them and if he could find them and order them back to work.

Q. 25. Do you know whether this was done?
A. 25. My orders were carried out to the extent that they were found, but unfortunately --

J.A. Q. 26. How do you know?
A. 26. How do I know they were found, Sir?

J.A. Q. 27. I don't want you to tell what somebody else has told you, unless it has been told in the presence of the accused.
A. 27. Well, the sergeant reported back to me --

J.A. That is what I don't want you to say.

Pros. Q. 28. As a result of your sending the sergeant to look for these men, did the accused and these other soldiers return to work?
A. 28. No, Sir.

Q. 29. Carry on.
A. 29. I decided I had to make a decision of my own so I decided that I would let the matter rest as far as the absence of these soldiers were concerned, and that I would report their absence to my O.C. of 15 Coy at the conclusion of the day's work.

Q. 30. When you say your "O.C." who do you mean?
A. 30. Major McPhail, Sir, 15 Coy.

Q. 31. Carry on, please.
A. 31. Shortly before closing time, in other words at approximately 5.00 o'clock we had another slight breakdown in the mill - namely the resaw. I made arrangements with the resawyer and filer to meet me at the mill after tea.

Q. 32. Yes, what time would that be?
A. 32. My appointment with the resawyer was at exactly 6.30, 1820 or 1830 hours at 15 Coy's camp.

Q. 33. 1820 or 1830 hours at 15 Coy's camp?
A. 33. Right, Sir.

Q. 34. And where is 15 Coy's camp in relation to the Kiltarlity mill?
A. 34. Approximately three miles or fifteen minutes' journey by lorry.

Q. 35. Who is the resawyer?
A. 35. Private James Walsh of 15 Coy.

Q. 36. Who is the other rank that you mention having made arrangements with to meet?
A. 36. Sergeant A. Blizzard of No. 5 District.

Q. 37. Yes, and where was he to meet you?
A. 37. He was to meet me and did so at Kiltarlity Mill at 1845.

Q. 38. At 1845 or quarter to 7?
A. 38. Right.

Q. 39. Sergeant Blizzard was to meet you at Kiltarlity Mill?
A. 39. Right, Sir.

Q. 40. Yes, carry on.
A. 40. We met Sergeant Blizzard there.

Q. 41. Just a minute; first of all you're still at the mill. You made these arrangements to meet. Did the mill carry on until you got back at 1845 hours.
A. 41. The mill closed down at its normal time of 1730. Everybody went to their respective camps for tea, and after tea at 1830 I met Private Walsh and with him proceeded to Kiltarlity Mill arriving there at 1845 hours.

Q. 42. Now, you mentioned that the mill closed down at its usual time at 1730 hours and that everybody went to their respective companies for tea. What steps are taken for the protection of the mill in the absence of members of the two companies?
A. 42. A mill guard and night watchman combined in the one man is provided by 15 coy, who reports and takes over his duties at the closing of the mill - at that particular time of the year it was 1730.

Q. 43. You say a mill guard and night watchman combined in one man. He has both the duties of guarding the mill and night watching?
A. 43. That is right.

Q. 44. What other duties has the night watchman got?
A. 44. One of his most important duties is to look after the fire in the steel boiler which operates the scotch mill.

Q. 45. Yes?
A. 45. And carry out the necessary cleaning which is done.

Q. 46. Now on September 14th when the mill closed down at 5:30, was there any one else on the property to your knowledge when you together with the crew at the mill departed for tea?
A. 46. No, Sir.

Q. 47. As far as you know there was nobody else?
A. 47. No, Sir.

Q. 48. On the property -- Do you know of your own knowledge whether any others were expected to be at the Kiltarlity Mill from the closing down time until you arrived back after tea?
A. 48. Yes, Sir. I had made -- rub that out -- the District Transport people had made arrangements to look over the motors in the mill and make some necessary adjustments to them, which they could only do when the mill was closed down.

Q. 49. Yes.
A. 49. These are things which they are responsible for therefore I took no notice of whether they were there on time or not because I have enough faith in them to know they would be there shortly after we left the mill.

Q. 50. You don't know of your own knowledge whether these men had arrived at the time of your departure?
A. 50. No, Sir, I didn't actually see them arrive when we departed but knew they should arrive shortly.

Q. 51. Alright, Mr. Murphy, will you proceed with your return to the mill?
A. 51. Upon my return to the mill at quarter to 7 accompanied by Private Walsh I met Sergeant Blizzard who is attached to 18 Coy.

Q. 52. Was Sergeant Blizzard at Kiltarlity Mill when you arrived?
A. 52. No, Sir, he arrived - I would say - a minute after we did. In other words, we waited a moment for him.

Q. 53. Who was at the Kiltarlity Mill when you did arrive at quarter to 7?
A. 53. As far as I know, Sir, the night watchman.

Q. 54. Did you see anybody else?
A. 54. I did not see anyone else.

Q. 55. At the time of your arrival?
A. 55. At the time of my arrival.

Q. 56. Yes, what did you do after your arrival at quarter to 7?
A. 56. We three immediately went up onto the main floor of the mill and our undivided attention was given to the matter of repairing the resaw. We worked on the machine until between ten minutes after and fifteen minutes after seven.

Q. 57. Yes; just at this point I would like you to describe the mill. Describe how it is laid out, how its constructed. I mean not necessarily from the machinery end but from the standpoint of the structure of the building that contains the mill?
A. 57. Well, Sir, the structure is a long oblong affair with the two main entrances one on each side of the mill.

Q. 58. How many stories?
A. 58. Two stories, Sir, the bottom is taken up altogether by belts and shafts and pulleys, and the upper story is taken up by the actual machinery.

Q. 59. Where are the power plants?
A. 59. The power plants are on the bottom floor.

Q. 60. What means of ingress or egress is there to the bottom floor where the power plants are?
A. 60. There are two doors, two main doors, two in front of the two - of the three motors, rather, on one side of the mill; and there is a door immediately opposite the motors on the other side of the mill; also another door at the front end of the mill immediately next to the log pond.

Q. 61. Immediately next to the log pond, and then what method of entry is there to the second story?
A. 61. Steps rise from the basement doors in both cases up to a landing on the second floor and that gives you entrance to the second floor.

Q. 62. And how many entrances are there to the second floor?
A. 62. Two main entrances.

Q. 63. Are they entrances on the same side?
A. 63. No, Sir, they're opposite each other on either side of the mill.

Pros. I think at this point, Mr. President, I will produce and show to the witness a sketch of the Kiltarlity Mill premises. I don't propose to have it entered as an exhibit at this moment, but to have it marked and identified.

J.A. Let us see that. (To the Defending Officer) Have you seen this?

Def. I don't know if I have seen that one. I have seen one with markings on it which I propose to object to on the ground that this is a plan which contains what appear to be tracks pointed out by various witnesses showing movements of the accused and movements, I think, of another witness. The plan to be produced must be just a plan.

Pros. I wont take exception to the objection. The only thing is it will prolong the proceedings because I will have to have this witness prepare a sketch right here in the court.

J.A. I don't think you had better present that plan.

Pros. That is why I was going to have it marked for identification. If the objection still holds --

J.A. It is up to the court to decide whether the objection of the Defending Counsel will be upheld or not. I think the court will adjourn for a few minutes to determine that.

The Court is closed to consider their decision.
The Court allow the objection.
The Court is re-opened, and the above decision is made known to the accused.

Pres. The objection of the Defending Counsel has been sustained in connection with the exhibit.

Q. 64. Mr. Murphy, I have asked you for a description of the mill at Kiltarlity. Now I would like you to draw a rough sketch of the mill and its surroundings from memory. It isn't a large scale sketch of the mill itself I want - a sketch of the mill premises and the surroundings.

(Witness drafts sketch as requested)

A. 64. Sir, I don't want to take up too much of the time. That is the main plan - the two doors I mention. Anything else you want me to show?

Q. 65. That will do as far as the mill buildings are concerned. Will you make a sketch on a smaller scale showing the position of the mill in relation to surrounding buildings.

A. 65. I still maintain, Sir, the only other buildings are mill office and scotch mill and log pond.

Q. 66. Are there no other buildings within half a mile?

A. 66. You mean civilian buildings?

Q. 67. Civilian buildings as well.

(Witness drafts sketch as requested)

Q. 68. I am producing and showing to you this sketch you have just made. Now will you identify that please and tell the court what it is, what it purports to show?

A. 68. This is a rough sketch of the mill, of the main Kiltarlity mill - here the log pond - here the main highway - our private road running into the Lovatt's Estates sawmill which is here - alongside of that our scotch mill and over here our mill office - here our blacksmith shop - there are the two doors I mentioned a few minutes ago.

J.A.M.

Q. 69. Which two doors?
A. 69. The two doors going into the bottom part of the mill. Just above those there is a stairway leading in both cases from these doors which makes an entrance into the main mill, approximately there.

Q. 70. When you say "main mill" what do you mean?
A. 70. I beg your pardon?

Q. 71. When you say "main mill" what do you mean?
A. 71. Sir, the upper floor.

Q. 72. Are those two entrances you show there the only entrances in the bottom of the mill?
A. 72. No, Sir, my mistake. There is another entrance here just immediately next to the log pond right along side the log haul. Those are the main entrances to the mill.

Q. 73. Those are the main entrances to the mill?
A. 73. Yes, Sir.

EXHIBIT "D"

Q. 74. I am producing and showing to you a second sketch which you have just made. Will you please identify it?
A. 74. This shows again the main highway?

Q. 75. What highway?
A. 75. Highway from Brochies Corner to Struy.

Q. 76. Where does it lead to?
A. 76. Up the valley past 18 Coy and beyond up the Struy road.

Q. 77. You don't know the name of that road?
A. 77. Sorry, Sir, I do not know the name of that road.

Q. 78. Carry on.
A. 78. Next here on this rough sketch the entrance to the millyard which we always use which runs from the highway to the Lovatt Estate sawmill. We use that road;and thennext to that have the Kiltarlity Mill which is just directly behind. Directly behind Kiltarlity Mill is the Scotch Mill. Over here is the civilian sawmill on the Lovatt Estate. And I have shown a track here from the sawmill to a little hotel commonly known as McKenzies Pub.

Q. 79. What is that track?
A. 79. That is nothing more or less than a path or a track, and I have shown a narrow road from the hotel, store, or pub - whichever you wish to call it - coming out again to the main highway.

Q. 80. I notice on Exhibit "D" that you show a log pond;in relation to the mill where is the log pond on this sketch.
A. 80. Slightly scotched in but it's the same.

Q. 81. Now, is there any other track or path from the Kiltarlity Mill to McKenzies Pub?
A. 81. There is a very slight track - I have never seen it used much - but which does go from this Scotch Mill.

Q. 82. Will you indicate on the sketch please?
A. 82. Unfortunately I am too close to the end of the page, but it runs in this direction and comes out here and emerges into this track here.

EXHIBIT "E"

Q. 83. Very well, Mr. Murphy, let us go back then to your arrival at the Kiltarlity Mill at quarter to 7 on the night of September 14th. I believe you told the Court that there was two other ranks with you, one Sergeant Blizzard and one Private Walsh, and that to the best of your knowledge these two other ranks together with the night watchman and yourself were all that were on the property at that time?

A. 83. Yes, Sir, may I say one thing though, that I expected the District mechanics from No. 5 District to be there; although I didn't actually see them, I assumed that they would be there.

Q. 84. You assumed that they would be there?

A. 84. Right, Sir.

Q. 85. But all that you did see was Sergeant Blizzard, Private Walsh and the night watchman?

A. 85. I will modify that too, Sir. I did not see the night watchman. I assumed again that he would be at his post and I know that he was.

Q. 86. How do you know that he was?

A. 86. Because subsequent events proved that he was at the post.

Q. 87. Did you see him subsequently?

A. 87. Yes, Sir.

Q. 88. Very well, when you returned at quarter to seven what did you do?

A. 88. Accompanied by the two other ranks I went up to the second floor of the mill and proceeded directly to the resaw, and we three gave it our undivided attention until we found out what was wrong and corrected the matter.

Q. 89. What was the condition of the lighting at that time?

A. 89. Sir, you will remember we were in the early evening of September and it was very, very light at that time, so if you mean - do you mean the light plant?

Q. 90. No, I mean the lighting if you were working?

A. 90. Quite bright, Sir.

Q. 91. Was there any machinery running when you were there?

A. 91. To the best of my knowledge, no, Sir.

Q. 92. Yes, then you, Sergeant Blizzard and Private Walsh proceeded to perform the duties for which you returned?

A. 92. Yes, Sir.

Q. 93. How long did it take you to complete this job?

A. 93. Until between ten minutes after and fifteen minutes after seven.

Q. 94. Then what did you do?

A. 94. I left Private Walsh and Sergeant Blizzard still discussing the machine in question and told them that I would have a quick glance at the motors to make sure that the mechanics had carried out their duties.

Q. 95. Yes, now during the period that you were working upstairs, did anything happen in the mill to distract your attention from your job?

A. 95. There were some slight noises but I did not mention them to my companions and paid very little attention to them because as I said before I assumed that the mechanics were working on the machines, and I attributed all extra noises to that cause.

Q. 96. But you did hear noises?
A. 96. Yes, I heard noises.

Q. 97. You say you completed the job you were working on at approximately 7:10 - between 7:10 and 7:15 - what then did you do?
A. 97. I went to the side of the mill closest to the Scotch Mill and paused for a moment on the landing before going down the stairs.

Q. 98. Why did you pause?
A. 98. I paused because my attention was attracted by the two accused, or by the accused, who were proceeding in the direction between the Scotch Mill - rather the log pond and the Scotch Mill.

Q. 99. Will you step up here and just show the Court where you were standing at the time that you noticed the accused and another soldier?
A. 99. I was standing on this landing which I have indicated by these little marks here, and looking down I saw the two accused leaving from a point approximately here by the log pond and going in this general direction.

J.A. Will you mark on there where you were standing.

A.99 cont'd. My line of vision was blocked when the accused got here. I believe in the last place in my evidence was I was standing on this landing marked "X", saw the accused proceeding from this point on the log pond marked "X" in this general direction between there and the Scotch Mill.

Q.100. Yes, could you follow their movements?
A.100. I followed their movements, Sir, while standing on the landing until they disappeared behind the Scotch Mill.

Q.101. Did you see them again from that vantage point?
A.101. Yes, Sir. They apparently didn't stop walking because only a moment later I saw them on the opposite side of the Scotch Mill and then --

Q.102. Proceeding where?
A.102. Proceeding in the direction of the woods where the small track is.

Q.103. Will you look at Exhibit "E" and show the line of their march from where you saw them?
A.103. Here is the track which they disappeared down; this is all woods so from there on I saw nothing more of the accused at that moment.

Q.104. So that after they passed the Scotch Mill you again saw them from your vantage point at the place marked "X" where you were standing proceeding along the path towards the woods; where does that path lead to?
A.104. By a roundabout way to McKenzies Pub, Sir.

Q.105. How were they walking?
A.105. They were walking quite briskly, Sir. There was nothing untoward in the way they were walking except they were walking very briskly.

Q.106. By their walking was there anything to indicate to you their condition at that time?
A.106. Definitely, No, Sir, I still insist they were walking very briskly and showed no evidence of anything being wrong with them.

Q.107. From the appearance that they gave could you say that they appeared normal?
A.107. I would say normal, Sir.

MAH

Q.108. Very well, Mr. Murphy, what then transpired?
A.108. I continued on my way down the stairs and into the bottom door which took me --

Q.109. Bottom door of what?
A.109. Of the Kiltarlity Mill which took me in to the motors, where the motors are situated.

Q.110. Yes.
A.110. I carried on past the first motor and my attention was attracted by a belt hanging loosely, and on glancing at it the second time I saw that it had been cut in two places.

Q.111. Yes, what was this particular belt used for?
A.111. This particular belt is a six inch belt which drives a set of rollers in the upper part of the mill.

Q.112. What else did you observe?
A.112. I glanced around then at the bottom part of the mill and noticed that most of the belts had been slashed in several places.

Q.113. When you say "slashed" what do you mean?
A.113. I mean cut right across.

Q.114. Completely severed?
A.114. Completely severed. My whole thought then, Sir, was to get the damage repaired and in the meantime report it to O.C. District and O.C. No. 15 Coy.

Q.115. Now did you observe any other damage at that time?
A.115. No, Sir, at that time I did not; I only noticed the damage to the belts.

Q.116. Then what did you do?
A.116. I went straight on - rather called to my two companions, Private Walsh and Blizzard, that a great deal of damage had been done and asked --

J.A. Just a minute, I don't wish you to infringe from the hearsay rules so much. If the accused was not present I don't want you to tell the Court what you have told someone else and what someone else has told you.

Witness. I quite appreciate that, Sir, I was only trying to answer Major Shillington.

J.A. I can't let you answer with what you asked them and what they told you and so on.

Q.117. You gave certain instructions to the two men who were with you; then what did you do?
A.117. Proceeded to the office - our office in Kiltarlity Mill.

Q.118. Will you show the Court on this sketch where the office of the Kiltarlity Mill is. Mark it with something. You have written there word "Office"; is that correct?
A.118. Yes, I found the door locked and so went out onto the main highway, turned right and walked along to the telephone kiosk.

Q.119. How far is the telephone kiosk from the mill office?
A.119. 150 yards, Sir, roughly from the mill office.

Q.120. When you got to the telephone kiosk what happened?
A.120. When I got there I was required to wait for a few moments while one of the accused was attempting to make a phone connection.

Q.121. Who was making the phone connection?
A.121. Private Hayes, Sir.

Q.122. By the way, did you - were you able to identify the two soldiers that you saw moving in the Kiltarlity Mill yard?
A.122. Yes, Sir.

Q.123. Who were they?
A.123. Private Hayes and Private Owens.

Q.124. Private Owens the accused in this particular case?
A.124. Yes.

Q.125. You have arrived at the kiosk and Private Hayes is there before you, is that right?
A.125. Right, Sir.

Q.126. Tell us what happened then?
A.126. I waited until he finished his telephone discussion and then asked him one question.

J.A. Was Owens with him?

Witness. No, Sir.

J.A. Don't tell us what you asked him or what he told you.

A.126. cont'd. I phoned myself to No. 15 Coy and asked that the two accused be picked up.

J.A. Just a minute, don't tell us a conversation - say you gave certain instructions.

Q.127. You gave certain instructions, yes, and as a result of those instructions what took place?
A.127. An escort was sent from 15 Coy to find the two accused.

Q.128. Then what did you do after that?
A.128. I then returned to the mill, phoned No. 5 District again and proceeded to call up the necessary mechanics to repair the damage.

Q.129. Now when you returned to the mill did you make any closer inspection of the premises?
A.129. Yes, Sir.

Q.130. And what did you find?
A.130. I found then, Sir, that the three motors which motivate - which run the mill had been damaged - one not very much - the other two quite considerably.

Q.131. Now, just what form did the damage take on these motors?
A.131. Sir, I am not honestly competent to tell the Court the exact extent because I turned all that matter over to the District Transport Officer and gave my whole attention to the repairing the belts.

Q.132. Yes, but you must have observed certain things which indicated to you that damage had been done; what did you observe?
A.132. Yes, Sir, I did observe in some cases electric wires had been ripped out or cut and in one case a sheet length had been torn out, and in one case a handle had been taken off; but outside of that I didn't pay any attention to the smaller details.

Q.133. Yes, now in your inspection of the damage done, did you discover how the damage had been done?
A.133. Yes, Sir, the belts had been severed in such a neat way that they could only have been cut with a very, very sharp instrument.

Q.134. Such as what?
A.134. Such as a knife; I would say a knife would be the natural thing - the only thing that it could be done with.

Q.135. Was there anything else to indicate that any other means had been taken to affect the damage?
A.135. Yes, Sir, a handsaw was found lying beside one of the belts and on one of the belts were the marks that looked very much as though at first a handsaw had been tried and found not fast enough, and was thrown down.

Q.136. Yes; I am producing and showing to you an instrument; will you please indicate what it is and identify it if you can?
A.136. Yes, Sir, this is the handsaw which was found lying on the floor by myself.

Q.137. And you say that from the indication by one of the belts an attempt had been made to cut the belt with this saw?
A.137. Yes, Sir.

Q.138. Mr. Murphy, I am showing you a collection of articles which I would like you to look over and identify if you can. EXHIBIT "F"
A.138. These, Sir, are some of the smaller belts which were cut. That is the ends and the case of this here the trimmings which we had to make in order to square up one of the belts. Many of the belts we could not trim, therefore we relashed them on just as they were cut, but in some cases we were able to trim them, for instance, as in this case here.

Q.139. Those are the trimmings, you say, that were cut off the belt itself in order to square the edge?
A.139. Right, Sir. These are some of the lacings which were cut and which we had to then discard and when we laced the belt over again. These, Sir, I don't think you will find that I have identified them. They were - that was part of the O.C. Transport - of District.

Q.140. Did you see them?
A.140. I helped him to gather them up. I can identify them as coming from the mill.

Q.141. State what they are?
A.141. They are some of the wires connecting the distributor.

Q.142. The distributor on what?
A.142. On one of the motors.

Q.143. And these other parts?
A.143. Are just parts of belts some of which we were able to save; in most cases we had to lace the belts.

Q.144. I am producing and showing to you some pieces of metal tubing. I would like you to look at it and identify it if you can. EXHIBIT "G"
A.144. This, Sir, is tubing which carries the fuel on one of the motors mentioned.

Q.145. Yes, and where was that tubing?
A.145. It is - I beg your pardon, Sir.

Q.146. Where was it; where did you see it?
A.146. It was found - I did not find it and I will not say I did - but I know it found --

J.A. You don't know yourself - don't say

Q.147. Can you identify where it came from?
A.147. I can only identify it that it came from Kiltarlity Mill.

J.A. How do you know it came from Kiltarlity Mill?
Witness. Because, Sir, I was there when this Exhibit was made up.

J.A. You can't say from reading that tag or from the fact that you were present at the time when the Exhibit was made up; do you recognize it in any way?
Witness. I recognize it, Sir, but as I say --

Q.148. You can't actually identify it of your own knowledge?
A.148. Yes, Sir, I will identify it as coming from Kiltarlity Mill; that is all I know, Sir.

Q.149. And from what portion of Kiltarlity Mill?
A.149. From the motors in the bottom floor of Kiltarlity Mill.

Q.150. You know it's from the motors in the bottom floor of Kiltarlity Mill?
A.150. Yes, Sir.

EXHIBIT "H"

Q.151. I am showing you a roll of belting, Mr. Murphy; I would like you to look at it and identify it if you can please?
A.151. Yes, Sir, that is what is left of a forty-five width belt which is colloquially made known as a corner drive in the bottom floor of Kiltarlity Mill.

Q.152. Yes, I would like you to further identify it by saying just exactly where that belt came from?
A.152. That is from Kiltarlity Mill and as I say it is originally a forty-five foot belt.

Q.153. I want you to examine that belt, Mr. Murphy, and see if you can determine in your own mind how it was severed. (Witness examines belting)
A.153. Well, it was certainly severed with a very sharp instrument. Furthermore on the first attempt the instrument only got about three inches and on the second attempt it went right through.

Q.154. What leads you to believe that there was two attempts. I want you to examine it closely; the light isn't very good; better get down.
A.154. My belief for that is two reasons. The first - you can see yourself that the first cut;there's a definite stop in the first cut. It must have been cut from that way otherwise there would not be a jag in that direction. The second reason, I have been cutting belts for so long I know it sometimes is hard to go through a belt that size in one stroke.

Q.155. You say that belt took two strokes to cut. I want you to look at that belt even more closely than you have if you have to get down on your knees to do it, and see if any other evidence on that belt that leads you to believe two slashes were made.
A.155. Yes, Sir, the two cuts are definitely on different angles.

Q.156. How can you tell?
A.156. This cut here is almost square; this one here is on an acute angle.

Q.157. Are there any other marks on that belt besides the line of severance that would indicate that two slashes were made? Now this light is bad so I want you to look at it very closely. The belt wasn't cut there was it. Just look at the place where it was cut.
A.157. That is the only indication that I have, Sir, that there was a stroke.

Q.158. Take the belt over by the window. See if you can find out how far the first slash went.

A.158. I see what you mean now, Sir, yes. On the first stroke it looks as though the knife or the hand guiding the knife had missed and the point of the blade of the knife jumped out of the cut here and the point of the blade only scratched across the blade; therefore a second attempt had been made to correct that. I am sorry for not seeing that.

Q.159. Now when that belt is in position in the mill and operating, how high is it off the ground?

A.159. Not more than oh about ten inches.

Q.160. Not more than about ten inches off the ground?

A.160. The bottom side of it.

Q.161. What about the top side of it?

A.161. Oh I should say it is about four feet.

Q.162. The top side of the belt is about four feet?

A.162. It is what we call a corner drive; it makes a double turn and one part of the belt is up about four feet and the other part down.

Q.163. When the belt is in operation is it parallel with the ground?

A.163. Yes, Sir.

Q.164. It is parallel with the ground; just as in that position there? (indicating)

A.164. This position. (indicating)

Q.165. And at right-angles to the ground?

A.165. It runs parallel to the ground.

Q.166. It runs parallel to the ground but the edge of the belt is at right-angles to the ground?

A.166. Unfortunately, the blessed belt - off the record of course - both parallel and at right-angles.

Q.167. I want you to explain to the court how that belt operates?

A.167. Well the belt operates on four pulleys and in one position it is parallel to the ground and in another position it is at right-angles to the ground.

Q.168. The edges of the belt in one position are at right-angles to the ground, and in other position the edges are parallel to the ground?

A.168. Correct.

Q.169. Where the belt is running parallel, or the edges of the belt are running parallel to the ground, how high off the ground is that belt when operating?

A.169. As I say, about ten inches.

Q.170. That is the lower portion?

A.170. Lower portion - the upper portion ~~ten~~ four feet.

Q.171. One portion that high and other portion that high?(indicating)

A.171. Right.

EXHIBIT "I"

Q.172. Apart from what you have told us about finding this saw, did you observe any other instrument?

A.172. No, Sir.

Q.173. At the mill at the time that you made the discovery of the damage?

A.173. No, Sir.

Pros. Mr. President, it is seven minutes after twelve and there is still considerable evidence to take from this witness. I suggest, possibly, that it might be advisable if we stop right at this time. The other ranks will be starting to lunch.

AT 1210 O'CLOCK THE COURT ADJOURNED UNTIL 1415 O'CLOCK ON THE 6th DAY OF DECEMBER, 1943.

ON THE 6th DAY OF DECEMBER, 1943, AT 1415 O'CLOCK, THE COURT RE-ASSEMBLED PURSUANT TO ADJOURNMENT, PRESENT THE SAME MEMBERS AS WHEN ADJOURNED.

Q.174. Mr. Murphy, at the time of adjournment we had just identified certain exhibits and you had also told us that on making the discovery of the damage to parts of the machinery at the mill you proceeded to the mill office and found it locked, then you proceeded to a telephone kiosk; is that right?

A.174. Yes, Sir.

Q.175. Did you see the accused when you were on your way to the telephone kiosk?

A.175. Yes, Sir.

Q.176. Where did you see him?

A.176. As I approached the kiosk along the highway I noticed one Private Hayes emerging from the road entrance to the McKenzies Pub; at the same time out of the corner of my eye I noticed the other Private Owens crossing the field immediately in front of the pub, making a rather diagonal walk across it.

Q.177. I am showing you Exhibit "E"; if you will take it and show the Court, explaining exactly so that the stenographer will get it down.

A.177. This is the field. I walked along the highway towards the kiosk. Here is the entrance to the pub. I saw Private Hayes as he emerged from here going in that direction. I saw Private Owens as he was crossing the field; just at that time he was proceeding in a more or less diagonal direction across the field, more or less towards the road in the direction of the entrance.

Q.178. And did you observe his condition at that time?

A.178. Yes, Sir.

Q.179. Can you tell us anything about his condition?

A.179. At that time he appeared to be walking slightly erratic, and I put it down to that he must have been to a certain extent under the influence of liquor.

Q.180. That is the impression you had at that time?

A.180. That is the impression I had at that time.

Q.181. Now you told us too that you went to the kiosk and after a few moments used the telephone, then returned to the mill. What did you do after you returned to the mill.

A.181. My first action on returning to the mill was to - by that time the office door was open and I got to a telephone and phoned up No. 5 District and reported to Major Kennedy.

Q.182. What did you do after that?

A.182. I then proceeded to organise a party to repair the belt damage.

Q.183. Anything else that you did that afternoon; by the way what time did this take uplace?

A.183. Very close to 7;30, Sir.

H.H.H.

Q.184. Now anything else that happened?
A.184. At the same time I was informed.

Q.185. Now don't tell us what you were informed.
A.185. I directed that the escort pick up Private Owens; that is to the best of my knowledge of the most important thing I did.

Q.186. Where was Private Owens?
A.186. There you got me again; I was informed.

Q.187. Don't tell us what you were informed; as a result of what you were informed, what did you do?
A.187. Directed that he be picked up and medical attention provided for him.

Q.188. Did you see him again?
A.188. No, Sir.

Q.189. You didn't see him yourself again?
A.189. No, Sir.

Q.190. Did you see him again that night at all?
A.190. No, Sir, I did not see Owens again.

Witness cross-examined by Defence Counsel.

Q.191. Mr. Murphy I would like you to run quite shortly over some of the timings when you say your mill broke down on the first occasion of this day?
A.191. Yes.

Q.192. What time was that?
A.192. On the first occasion it broke down at one o'clock.

Q.193. And how long did it take to repair it?
A.193. Approximately two hours. We were ready to start again at three o'clock.

Q.194. And did you start at three?
A.194. Yes, Sir.

Q.195. Did you have your men there at three o'clock?
A.195. I had all the crew there except the four men.

Q.196. You carried on then at three o'clock; when/next did the breakdown take place?
A.196. The next breakdown occured at approximately five o'clock but did not necessitate shutting down the whole mill.

Q.197. Tell me this; your men who were working would be all around the mill at about five o'clock; would be there until five o'clock?
A.197. Yes, Sir.

Q.198. And you would be there at five o'clock?
A.198. Yes, Sir.

Q.199. And when did you leave the mill?
A.199. At official leaving time - 5:30.

Q.200. You came back then, didn't you?
A.200. Yes.

Q.201. Because you had some adjustments to be made?
A.201. Yes, Sir.

Q.202. What time was it fixed that you would come back?
A.202. The time fixed, Sir, was we would leave this camp at 6:30 arrived approximately quarter of seven; takes about fifteen minutes.

Q.203. You were back there by a quarter to seven?
A.203. Yes, Sir.

Q.204. Had the repair squad turned up by that time?
A.204. Your question, Sir, is rather misleading. Do you mean the repair squad for what I wanted to do or the repair squad for the motors.

Q.205. For what you wanted to do?
A.205. Yes, Sir, I was part of it; only three.

Q.206. What time had you started repairing?
A.206. Roughly at a quarter to seven.

Q.207. And that repairing would be in the top story?
A.207. Yes, Sir.

Q.208. Was it the belts or machinery?
A.208. It was to the actual machine we call the resaw.

Q.209. Well, now we have you upstairs - upper loft as it were. Was there anything supposed to be taking place downstairs with regard to the machinery downstairs at that time.
A.209. Yes, Sir, there was supposed to be some repair work done and it was done.

Q.210. That repair work was done in the downstairs part of the mill between what times?
A.210. Between 5:30 and 7:00 o'clock or 6:45.

Q.211. So that there would have been people downstairs while you were upstairs.
A.211. There could have been.

Q.212. There would have been wouldn't there, if this repair work was done?
A.212. Not necessarily; while I was upstairs this work could have been done between 5:30 and the time I left the mill at 6:45.

Q.213. You know whether the work had been done before you left the mill?
A.213. I know now that the work had been done.

Q.214. Can you give me the time when you saw the accused Owens?
A.214. 7:15 within a couple of minutes.

Q.215. Is that an approximation or a definite time?
A.215. It is very definite, Sir, 7:45 or rather 7:15.

Q.216. And at that time you saw Owens where?
A.216. Owens was proceeding from a point as explained before from the log pond to the Scotch Mill.

Q.217. Tell me this, Mr. Murphy, did you get a front view or back view of him?
A.217. I got a side view of the two of them and a front view of one of them.

Q.218. Which one?
A.218. That is a front view of Hayes as he turned.

Q.219. You didn't get a front view of Owens?
A.219. No, Sir, I got a side view of Owens.

Q.220. You have told us that at that time they were walking quite briskly?
A.220. Quite briskly, Sir.

Q.221. Would it be a fair statement to say that at that time when you saw Owens and Hayes that the damage concerning which the Court is now sitting had actually been done?
A.221. Yes, it was definitely done when I saw them.

Q.222. Before you saw these two, it had been done?
A.222. Yes.

Q.223. You can't put the time on when it was done?
A.223. No, Sir; I can say it was done by 7:15.

Q.224. Done by 7:15. You told us you saw nothing untoward in the walk of both?
A.224. Nothing untoward as I was going to walk upstairs, and it would have been quite noticable, I think, because we generally glance underneath the mill as a rule.

Q.225. You didn't see him limping for instance?
A.225. No, I did not see him limping.

Q.226. You have spoken of damage done to the belts and there was produced a very large and unwieldy belt there. What do you call that belt?
A.226. The colloquial name is a corner drive belt.

Q.227. That was one of the belts which was damaged.
A.227. That was one of the belts which was damaged.

Q.228. I understand from you that when it is operating one length of the belt is running about ten inches from the floor and another four feet from the [illegible] what I want to ask you, if you can remember, where was this belt cut; was it ten inches from the ground or four feet from the ground, on the pulleys or on the rollers?
A.228. I can only speak from memory, and to the best of my ability they were cut on the top side, that is the top part of the belt; the part of the belt four feet from the ground.

Q.229. Wasn't it underneath; there is a continuous belt there?
A.229. Well, no matter where it is cut, that means it is severed, it would lay inert on the ground as soon as it was cut; the tension would be gone. To the best of my ability I am sure that it was cut on the part of the belt that was about four feet from the ground.

Q.230. And could you tell us from the examination you made of the belt whether the cut was up or down?
A.230. All the cuts seem to be as if the cut - the instrument had been pulled towards whoever --

Q.231. Would you say that was an upward cut?
A.231. Slightly upward stroke.

Q.232. Well now, Mr. Murphy, when you were in the building, the mill building, attending to the belts, there may have been people about the millyard or the log pond?
A.232. Quite possibly, Sir.

Q.233. There was nothing about Owens, for instance, which made you suspicious of anything when you saw him?
A.233. To be frank, there was nothing about either one of them except they were Absent Without Leave, but that was the only thing that was suspicious.

Q.234. Subsequently when you saw them, I think Owens was crossing a field to your observation would you say they were under the influence of liquor?
A.234. No, particularly Owens; I wouldn't say that Hayes was particularly.

Q.235. The entrances to the mill; you told us there were three entrances to the mill?
A.235. Yes, Sir.

Q.236. Is it not the case that a person can get in at other different points, into this building?
A.236. In any mill, Sir, there are obviously little corners and places where a person bent on doing anything underhanded could get into the mill. When I say entrances I mean three main doors.

Q.237. Doors you would use going in and out, but there are other entrances people could get in or out?
A.237. Definitely yes.

Q.238. It is the case, isn't it, Mr. Murphy, that the ground round about this mill is definitely irregular, isn't it. There are deeps and hollows and I think barren?
A.238. Beyond the mill.

Q.239. For instance, when you saw Owens as you said walking erratic, over what sort of ground was he walking?
A.239. Over a field, a grass field.

Q.240. A fairly rough field?
A.240. No, not a rough field.

Q.241. You don't think the ground he was walking on would tend in any way to make his action peculiar?
A.241. Not to that extent, no, Sir.

Q.242. You think it was just drink?
A.242. I thought at the time and I should say that I think now it was drink.

Q.243. You could see nothing at that time to suggest the man was limping?
A.243. No, Sir.

Witness re-examined by the Prosecutor.

Q.244. Mr. Murphy, at the point where that belt which my learned friend referred was cut, was that at one of the points on the belt where the belt itself was travelling at right-angles to the ground or one of the points where travelling parallel to the ground?
A.244. Unfortunately, Sir, I don't think anyone here quite understands the fact that this belt is at no time absolutely at right-angles, by nature of the fact it is making a continual twist all the time. It is closer to being parallel to the ground than at right-angles; that is the closest I can give you on that.

Q.245. So that when you refer to the belt being four feet, that would be the highest edge of the belt?
A.245. Yes, Sir.

Q.246. Now, you told my learned friend that from the appearance of the cut it would look like an upward cut; just what do you mean by that?
A.246. What I mean by that is if you wish to cut a belt you are going to have it above you and slash it down, or have it more or less level or below you and make an upward cut. (indicating). Does that explain what I mean.

Q.247. Not exactly. For instance if the belt is on an angle such as that and the slash stroke started at this point.(indicat
A.247. I would still call that an upward stroke because my hand and the power from my hand would be an upward stroke. (indicating).

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Q.247. Not exactly. For instance if the belt is on an angle such as that and the slash stroke started at this point.(indicating)
A.247. I would still call that an upward stroke because my hand and the power from my hand would be an upward stroke. (indicating).

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J.A.

Q.248. If the hand holding the handle of the instrument would be below the edge of the knife, the knife would be upwards?
A.248. No, Sir, just the opposite.

Pros.

Q.249. In order to cut that belt what is the action of the knife in the hand?
A.249. I still insist that it is an upward stroke, but it is a matter of debate.

Witness questioned by the Court.

Q.250. There was one place, Mr. Murphy, where you mentioned the fact that you had met Hayes at the telephone booth. I took it for granted that Hayes was out of the booth then after or before you made the telephone call?
A.250. No, Sir; I walked along this road; Hayes came out of this road; I was behind him. He was naturally at the telephone first, so I had to wait until he came out and spoke to him as he came out.

Q.251. When Owens was walking across this field when Hayes was in the booth, were you speaking to Owens?
A.251. No, Sir.

Q.252. Were you satisfied that all the machinery and the belts were in perfect order at 5:30 when they were closed down?
A.252. Very definitely, with the exception of the matter upstairs which we went down to repair.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with Rule of Procedure 83(B).

The witness withdraws.

Pros. At this stage, Mr. President, I propose to call a couple of witnesses out of turn in order to let them get back to Raigmore Hospital.

2nd Witness Prosecution

Dr. Sarah Kirkpatrick Ruth Gray, Raigmore Hospital, Inverness, being duly sworn, is examined by the Prosecutor:

Q.253. What is your full name?
A.253. Sarah Kirkpatrick Ruth Gray.

Q.254. And your profession?
A.254. I am a Doctor.

Q.255. And where are you following your profession?
A.255. At Raigmore Hospital, Inverness.

Q.256. Do you know the accused Private Owens?
A.256. I do.

Q.257. When did you have occasion to see him before?
A.257. He was admitted to Raigmore on the 14th September.

Q.258. Do you know what time roughly?
A.258. Round about 10:00 o'clock at night.

Q.259. And what took place after his admission to Raigmore?
A.259. Well he was admitted with a laceration of his thigh. He was taken to the theatre where the wound was incised and stitched.

Q.260. You examined the wound?
A.260. I did.

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Q.261. Can you tell us what the wound was?
A.261. It was a clean incised wound about two inches in length and it was deep. The deep tissues were divided on a lower plane than the skin and there would be a vessel cut.

Q.262. Did you probe the wound?
A.262. I did.

Q.263. Did you find any foreign matter?
A.263. Some small gritty particles.

Q.264. Were you able to determine what these gritty particles comprised?
A.264. No, Sir.

Q.265. When you say it was an incised wound, what do you mean by that?
A.265. It was a clean cut.

Q.266. From your observation of the wound, did you personally come to an opinion as to how the wound was caused?
A.266. No, I just took the patient's word for it.
Q.267. Did the patient tell you?
A.267. He said he thought he had fallen.

Q.268. He said he thought he had fallen, yes?
A.268. And cut himself on the glass.

Q.269. Did that explanation satisfy you?
A.269. Yes.

Q.270. What was the shape of the wound?
A.270. It was straight.

Q.271. A straight wound?
A.271. Yes.

Q.272. If the patient had not given you an explanation of the wound, what opinion would you have come to concerning the wound or cause of the wound?
A.272. I should have thought it had been caused by a sharp instrument.

Q.273. Such as what?
A.273. Anything with a cutting edge.

Q.274. Can you name anything with a cutting edge?
A.274. Possibly a knife.

<u>Witness cross-examined by Defending Counsel.</u>

Q.275. Dr. Gray, I don't think we have got your degree, have we?
A.275. M.B. C.H.B. Degree of Edinburgh.

Q.276. Is it right that when Owens was brought to Raigmore he had previously had some first-aid treatment?
A.276. Yes.

Q.277. Do you know whether there was any trace of the wound having been washed?
A.277. I am afraid it would be impossible to say.

Q.278. Tell me something about the wound itself. You tell me it was an incised wound and at least in one place it was deep; do you mean it was deep all over the whole two inches?
A.278. It was deep all over the whole two inches.

Q.279. And I think you say that one vessel was cut?
A.279. Yes, it had been tied.

Q.280. Dr., before any dressings had been applied to that wound, would there have been a considerable flow of blood?
A.280. Yes.

Q.281. Another point, you say that when the wound was washed out you did find some gritty substance?
A.281. Yes.

Q.282. Would that be consistent with prisoner's story that he had cut himself - fallen on the road and cut himself with glass?
A.282. Yes, it wasn't glass but it might have come from the road.

Q.283. It would be more consistent that the theory that he cut himself with a knife?
A.283. That would depend if it were a clean knife or not.

Q.284. You couldn't give us any indication of what kind of grit was in the wound?
A.284. No, it was just dark and might have been dust.

Q.285. Supposing the cut had first gone through the khaki trousers; that would be a clean instrument?
A.285. I should think so.

Q.286. A knife passing through the khaki uniform and then to the wound, it would clean itself wouldn't it?
A.286. The knife?

Q.287. Yes?
A.287. Yes.

Q.288. Would it be fair to put it to you that looking to the fact that there was some grit found in the cut, that satisfied you as a person of skill that it was quite consistent with what the accused told you?
A.288. Yes.

Q.289. Had fallen on the road and cut himself?
A.289. Yes.

Q.290. Assuming for a moment, Doctor, that a knife had been used, would it be very likely indeed that there would be some particles left on the knife?
A.290. Yes.

Witness re-examined by the Prosecutor.

Q.291. I believe you told my learned friend that the particles of grit found in the wound were not glass?
A.291. Yes, they were not glass.

Witness questioned by the Court.
Q.292. Just where was the cut on the patient?
A.292. On the anterior right side, of the right thigh.

Q.293. Up here?
A.293. About the middle on the anterior.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with Rule of Procedure 83(B).

The witness withdraws.

3rd Witness Prosecution — Katie Ann Bain, Junior Sister, Raigmore Hospital, Inverness, being duly sworn, is examined by the Prosecutor:

Q.294. What is your full name, please?
A.294. Katie Ann Bain.

Q.295. And what is your occupation?
A.295. Junior Sister.

Q.296. Junior Sister of what?
A.296. Raigmore Hospital.

Q.297. Do you know the accused Private Owens?
A.297. Yes.

Q.298. Will you look at him, please, and identify you know him?
A.298. Yes. (indicating accused).

Q.299. When did you see him before?
A.299. In the hospital.

Q.300. At the hospital?
A.300. As a patient there.

Q.301. Do you recall the date?
No answer.

Q.302. Do you recall Private Owens on the night of September 14th?
A.302. Yes.

Q.303. When he was admitted to Raigmore Hospital?
A.303. Yes.

Q.304. Why was he admitted there?
A.304. He had a cut on his thigh.

Q.305. And what part did you take in his admission to hospital?
A.305. Just taking his name.

Q.306. Anything else?
A.306. Getting him ready for the theatre.

Q.307. By getting him ready for the theatre; what do you mean by that?
A.307. Just injection.

Q.307. Did you do that while he was dressed in uniform?
A.307. Yes, Sir.

Q.308. And what else did you do?
A.308. That is all.

Q.309. Did you put him to bed in full dress?
A.309. The nurses put him to bed.

Q.310. And when they put him into bed, what happened to his uniform?
A.310. The nurses took it off.

Q.311. What did they do with it then?
A.311. Took it to the bathroom.

Q.312. Were you present when the nurses took it off?
A.312. Some of it.

Q.313. Then what did you do?
A.313. Just told the nurses to bath him.

Q.314. What did you do with the uniform?
A.314. Left it for the mill to call for it.

Q.315. Did you have anything to do with it?
A.315. No.

Q.316. Did you help take it off?
A.316. No, the nurses took it off.

Q.317. The nurses took it off?
A.317. Yes.

Q.318. What was done with the uniform after it was taken off?
A.318. Just kept in the bathroom.

Q.319. Who kept it in the bathroom?
A.319. Well, we keep them in the bathroom till they are called for.

Q.320. Whose "we"?
A.320. The sisters.

Q.321. That is another sister besides yourself?
A.321. Yes.

Q.322. Did you have the uniform in your hands at all?
A.322. Yes, I did.

Q.323. You did, when?
A.323. That same night.

Q.324. I am producing and showing to you a tunic; I want you to look at it, read what is on the tag there, and see if you can identify it?
A.324. That is my signature on the card.

Q.325. And you identify that?
A.325. Yes.

Q.326. You identify it as what?
A.326. It is - the signature on the card is mine.

Q.327. The signature on the card is yours; I want you to look at those trousers; can you identify those trousers?
A.327. Yes, Sir. That is my signature too.

Q.328. Why is your signature on the card?
A.328. I was given the card to sign before they took away the clothes.

Q.329. So that these are the same clothes as taken from you?
A.329. They aren't the same.

Q.330. You signed this tag; it was attached to the clothes; so that are these the clothes that were taken from you at the hospital?
A.330. Yes.

Q.331. Those are the clothes?
A.331. Yes.

Tunic - EXHIBIT "J"
Trousers- EXHIBIT "K"

Q.332. Now, I am showing you Exhibit "K"; I want you to look at it. Is there anything peculiar about them?
A.332. I thought the cut was further down.

Q.333. You thought the cut was further down where; I asked you, is there anything peculiar about the trousers that you wouldn't notice in the normal pair of trousers. Well, is that normal in a pair of trousers?
A.333. No.

Q.334. That is what I want you to tell me.
A.334. They're cut.

Q.335. Now, did you see the wound that Private Owens had?
A.335. Yes, Sir.

Q.336. Can you tell this Court whether or not that wound corresponds in position on Private Owens with the cut in the trousers?
A.336. I would say the cut was further down the thigh.

Witness cross-examined by Defending Counsel.

Q.337. You are a Sister at Raigmore?
A.337. Yes, Sir.

Q.338. Are you a State Registered Nurse, by the way?
A.338. Yes, Sir.

Q.339. This man was admitted to the Hospital suffering from a cut on his thigh; was it pretty far up the thigh?
A.339. No, it was down about here. (indicating).

Q.340. Was it across the thigh or down?
A.340. Down.

Q.341. Did you see the wound washed out by any chance?
A.341. No, Sir.

Q.342. And you think that the cut that was on the trousers that you saw that night was further up than the cut on these trousers produced to you?
A.342. Well, I didn't examine the trousers that night.

Q.343. I will put it this way; looking at the cut that was actually on the man, which you did examine - as a down cut - you would have expected the cut on the trousers to be further down than it is?
A.343. Yes.

Q.344. That might depend on the length of braces he was wearing?
A.344. Yes.

Q.345. Can you tell me, Sister, was there any trace of blood on the trousers that night?
A.345. I don't remember.

Q.346. Would these trousers be washed up before handed out in the hospital?
A.346. No, they weren't.

Q.347. Not sponged in any way?
A.347. No, Sir.

Q.348. The cut had been bleeding profusely,hadn't it?
A.348. Not when he came into the hospital; there was some slight stain.

Q.349. That was because it was dressed?
A.349. Yes.

Q.350. But it would bleed profusely - there would have been profuse bleeding before it was dressed?
A.350. Quite possible.

Q.351. You didn't see the cut being washed out at all?
A.351. No, Sir.

Q.352. And did you know how this cut had come about?
A.352. No, Sir.

Q.353. Were you not told by the man what had gone on?
A.353. I asked him and he said he got cut with glass.

Q.354. With a glass, or glass?
A.354. With glass.

Q.355. Did it seem to you that was quite possible?
A.355. Yes.

Q.356. There was nothing about the cut which made you doubt?
A.356. No.

Prosecutor declines to re-examine this witness.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with Rule of Procedure 83(B).

The witness withdraws.

4th Witness Prosecution — G-48173 Sergeant Raymond Arnold Parker, Mill Sergeant, No. 15 Coy Canadian Forestry Corps, being duly sworn, is examined by the Prosecutor:

Q.357. Sergeant Parker, what is your full name, regimental number, rank and unit?
A.357. G-48173 Sergeant Raymond Arnold Parker, Mill Sergeant.

Q.358. And your unit?
A.358. No. 15 Coy.

Q.359. And what is your employment in No. 15 Coy?
A.359. Mill Sergeant.

Q.360. Working where?
A.360. At the Kilmarlity Mill.

Q.361. You know the accused Private Owens?
A.361. Yes, Sir.

Q.362. He is in this courtroom at the present time?
A.362. Yes, Sir.

Q.363. Do you recall any events that took place on or about the 14th day of September, 1943, in which the accused was involved?
A.363. Yes, Sir.

Q.364. Will you please relate to the Court what you know about this, please?
A.364. Well, the mill was broken down for a couple of hours that day.

Q.365. What time did the mill break down?
A.365. Around one or shortly after, and at three o'clock or a little after possibly it started up again. I had been out on the log deck, went back in the mill and found a few of the men missing, so took over one of the jobs. Another one of the Mill Sergeants came in and told me --

Q.366. Who was missing?
A.366. Private Cripps and Private Miles.

Q.367. Who else?
A.367. I don't know anybody else; there was somebody else missing but I didn't know about it.

Q.368. There was somebody else missing but you didn't know aboutit?
A.368. So I got the other Mill Sergeant and asked him where the men were and he told me --

Q.369. No, no, as a result of what he told you what did you find or do?
A.369. I went over to McKenzies Pub to find out why they weren't coming back and --

Q.370. Where is McKenzies Pub?
A.370. Just a short ways from the mill, Sir.

Q.371. And what did you find when you got to McKenzies Pub?
A.371. Found four men outside drinking.

Q.372. Who?
A.372. Privates Owens, Hayes, Miles and Cripps.

Q.373. Private Owens is the accused here?
A.373. Yes, Sir.

Q.374. What conversation took place between you and the accused at that time?
A.374. Well, I asked if they were coming back; they said yes, as soon as they drank their beer.

Q.375. Were they in the pub?
A.375. No, outside.

Q.376. Outside the pub, yes; did any more conversation take place?
A.376. Yes, they asked me if I thought they were being used fair over there --

J.A. Who do you mean by "they"?
Witness. I just can't remember just who asked me, Sir, a general conversation carried on.

Q.377. Was Private Owens in the conversation?
A.377. Yes, Sir.

Q.378. Do you recall anything that Private Owens said to you in the conversation?
A.378. No, Sir, not definitely.

Q.379. As a result of what conversation you had, that you cannot remember, what then took place?
A.379. Went back to the mill.

Q.380. Went back to the mill; did you go back alone?
A.380. Yes, Sir.

Q.381. What happened to the accused and the other men?
A.381. I think they stayed there drinking their beer.

Q.382. What condition was the accused in at this time?
A.382. I would say under the influence of drink.

Q.383. What do you mean by under the influence of drink?
A.383. He showed signs of drinking.

Q.384. How did he show signs of drinking?
A.384. Well in the usual way - quite jolly, merry, seemed to be having a good time.

Q.385. Yes, any other signs?
A.385. No, Sir.

Q.386. No other signs?
A.386. Well, I could see him drinking.

Q.387. You saw him drinking; then you went back to the mill, you say. When did you next see the accused?
A.387. Around five o'clock.

Q.388. About five o'clock; where did you see him on this occasion?
A.388. Same place.

Q.389. When you say "same place", where do you mean?
A.389. Outside McKenzies Pub.

Q.390. And what took place on this occasion?
A.390. I told them to catch the mill truck.

Q.391. You told who?
A.391. The boys, the whole bunch.

J.A.A.

Q.392. To catch the mill truck?
A.392. Yes, Sir.

Q.393. The truck for where?
A.393. For camp.

Q.394. How many were there at McKenzies Pub at that time?
A.394. Four.

Q.395. The same four as there before?
A.395. The same four.

Q.396. What did you do then?
A.396. Went back to the mill.

Q.397. Did the accused go back to the mill on this occasion?
A.397. No, Sir.

Q.398. When did you next see the accused?
A.398. Seen the accused next at the Nurse's Home.

Q.399. What time would that be?
A.399. Between seven and eight.

Q.400. Between seven and eight, can you pin the time down a little closer than that?
A.400. Nearest eight, as close as I can come.

Q.401. Where is the Nurse's Home?
A.401. Just opposite the Kiltarlity Mill.

Q.402. Just opposite the Kiltarlity Mill, yes; do you know the nurse's name?
A.402. No, Sir.

Q.403. How did you happen to see Owens at the Nurse's home?
A.403. I met Lieut. Murphy and he told me --

J.A. No, no.
Q.404. As a result of what he told you, what did you do?
A.404. I went to the Nurse's home.

Q.405. What for?
A.405. To pick him up.

Q.406. What do you mean by "pick him up"?
A.406. Put him under arrest.

Q.407. And when you got to the Nurse's home, what did you find?
A.407. I found Private Owens in the Nurse's home being attended by her.

Q.408. Yes, why did he need attention?
A.408. He had his leg cut.

Q.409. Where did he have his leg cut?
A.409. On the upper part of his thigh.

Q.410. On the upper part of his thigh, yes; did you have any conversation with him at the time?
A.410. Yes, Sir.

Q.411. And what was the gist of the conversation?
A.411. I asked him how he cut himself.

Q.412. Asked him what?
A.412. Asked him how he cut himself; he said he feal going across a ditch.

Q.413. Said he fell when going across a ditch; did he say how he cut himself?
A.413. No, Sir.

Q.414. He gave no explanation other than he was crossing a ditch?
A.414. Just said he fell crossing a ditch.

Q.415. Did you look at the wound at all?
A.415. I took a quick glance at it.

Q.416. When you saw Private Owens was he fully dressed?
A.416. As far as I remember, he was.

Q.417. Did you see his clothes?
A.417. Yes.

Q.418. I am showing to you Exhibit "K"; would you take it, look at it and see if you can identify it?
A.418. It is very much like the same trousers but I couldn't swear to that.

Q.419. Same trousers as what?
A.419. That he had on.

Q.420. That who had on?
A.420. Private Owens.

Q.421. How long were you at the Nurse's home on this occasion?
A.421. Till he had his cut finished being dressed and get into the truck.

Q.422. And what did you do after the wound was finished - after the dressing of the wound was finished?
A.422. Put him in the truck and took him to the M.R.D. of 18 Coy.

Q.423. Took him to the M.R.D. at 18 Coy. For the sake of the evidence, say what the M.R.D. is?
A.423. Medical Reception Depot.

Q.424. At 18 Coy, and then what did you do?
A.424. Called the orderly sergeant and put him under arrest.

Q.425. Put him under arrest - what did you do after that - what did you do with the accused?
A.425. Left him under the Doctor's care.

Q.426. Left him under the Doctor's care; do you know about what time that was that you got to 18 Coy?
A.426. Around eight o'clock.

Q.427. Now what was Owens' condition apart from the wound itself; what was his condition at the time that you saw him at the Nurse's home?
A.427. He showed slight signs of drink.

Q.428. How do you mean - "slight signs of drinking"?
A.428. I can't answer the question, Sir.

Q.429. I beg your pardon?
A.429. I can't answer the question, Sir.

Q.430. If you arrive at a condusion, there must have been a reason for arriving at that conclusion?
A.430. As a rule you can tell if a man's been drinking by the way he looks.

Q.431. That is what I want; how did he look, that brought you to that conclusion; were you talking to him?
A.431. Yes, Sir.

Q.432. Was he talking to you?
A.432. Yes, Sir, talking quite normally.

Q.433. Talking quite normally?
A.433. Yes.

Q.434. Did you go to the Nurse's home alone or were you accompanied?
A.434. I was accompanied.

Q.435. Who was with you?
A.435. Private Hilson and Private Scott.

Q.436. Now in this conversation that you had with Private Owens and the others in front of McKenzies Pub, can you tell us whether or not Owens took part in the conversation?
A.436. Yes, Sir.

Pros. I submit, Mr. President, that in view of the fact that there is a general conversation of which the accused took part, the gist of that conversation can be admitted in the evidence.

J.A. Can you tell what Owens said; of course we know that Owens would hear the general conversation.

Q.437. Was Owens present for the full conversation?
A.437. Yes, Sir.

Q.438. What was the conversation?
A.438. They were trying to explain that they needed a 15 Coy Sergeant in the yard.

Q.439. Were these four men 15 Coy men?
A.439. Yes, Sir.

Q.440. And they were trying to explain to you-just tell us what words they used if you can?
A.440. I'm afraid I can't, Sir.

Q.441. How did they try to explain and why?
A.441. First, they were telling me how they were given a job that separated them and how they were not allowed to work together.

Q.442. Who said that?
A.442. I can't tell you, either Owens or Hayes.

Q.443. Either one or the other?
A.443. Yes.

Q.444. They weren't allowed to work together; what else was said?
A.444. I can't recall much more of the conversation - just worked around those few words.

Q.445. How long did this conversation last?
A.445. Not very long.

Q.446. And as far as you recall, the gist of the conversation was that they wanted a 15 Coy Sergeant?
A.446. A 15 Coy Sergeant or a 15 Coy N.C.O. who would look after them.

Witness cross-examined by the Defending Counsel.

Q.447. You have told us, Sergeant, that you were down at McKenzies Pub, as you called it, on two occasions on this particular day. I am not suggesting that you know all the ways to it, but perhaps you could assist me by telling me what different methods of approach are there from the millyard to McKenzies Pub?
A.447. One approach goes directly from the end of the mill across the field to the Pub.

Q.448. A path?
A.448. A path.

Q.449. A shortcut through woodland is it?
A.449. Yes, Sir, part of it is woodland - just bushes.

Q.450. Pretty rough?
A.450. Yes.

Q.451. Is there another way out to the main road and around by the main road?
A.451. Yes, Sir.

Q.452. And another way round by the back?
A.452. I suppose you could approach it any way you like.

Q.453. There are a number of ways to McKenzies pub?
A.453. Yes.

Q.454. Well now, on this particular day, on the first occasion when you went to round up these four men, were you under the impression that they were under the influence of drink, 'round about three o'clock?
A.454. Yes, Sir.

Q.455. And for that reason did you think it undesirable to have them working in the mill?
A.455. At that time, yes, it would be undesirable.

Q.456. And you told us that they were drink outside the pub?
A.456. Yes, Sir.

Q.457. And did they actually have their beer in pint glasses outside the pub?
A.457. Yes, Sir.

Q.458. It was not in bottles?
A.458. No, Sir.

Q.459. Big pints - can you tell me how many big pint glasses each man could have had?
A.459. No, I couldn't.

Q.460. We will leave that alone; you went back again round about five o'clock?
A.460. Yes, Sir.

Q.461. Were they outside again there?
A.461. Yes, Sir.

Q.462. Was there still a suspicion of beer about them?
A.462. Yes.

Q.463. And were they drinking outside the pub again?
A.463. I couldn't say.

Q.464. Did you see bottles and glasses about?
A.464. I saw glasses.

Q.465. Big pint ones?
A.465. Yes, Sir.

Q.466. And you have been asked about a conversation which took place in which you say the four men were involved, but you can't remember exactly who was taking a leading part in that conversation?
A.466. Yes, Sir.

Q.467. Would you say they were making a complaint or a - as we call it - a grouch?
A.467. I suppose you call it that, Sir.

Q.468. Not a very serious one?
A.468. No.

HHH.

Q.469. Were they in quite good humour?
A.469. Very good humour.

Q.470. You didn't take their grouch seriously?
A.470. No, Sir.

Q.471. Do you think they were taking it seriously themselves?
A.471. I didn't think so.

Q.472. Did you think they were trying to have a leg-pull with you?
A.472. No, I thought they had a legitimate grouch, but making no trouble about it.

Q.473. They were in quite good humour about it?
A.473. Yes.

Q.474. Were they laughing about it?
A.474. Laughing and joking all the time I was there.

Q.475. In point of fact you didn't think it necessary to report this as a complaint?
A.475. No, Sir.

Q.476. You didn't take it as a complaint?
A.476. No, Sir.

Q.477. You told us that you picked Owens up later on that night at the Nurse's home; that is the District Nurse for the District?
A.477. I suppose so.

Q.478. Did you see - was Owens - had Owens been attended to by the nurse by the time you got there, or was she in the process of attending him?
A.478. I think she was finished.

Q.479. Were his trousers on or off?
A.479. His trousers were on, Sir, by then. I can't remember.

Q.480. Did you see any blood about the trousers?
A.480. Yes, I saw blood on his trousers.

Q.481. The clothing itself was fairly dirty?
A.481. Yes, Sir.

Q.482. It was consistent with the man having fallen into a ditch along the road?
A.482. I didn't take much notice.

Q.483. But it was dirty?
A.483. It was dirty, yes, Sir.

Prosecutor declines to re-examine this witness.

Witness questioned by Judge-Advocate.

Q.484. Did you place the accused under arrest when you went to the Nurse's home?
A.484. Yes, Sir.

Q.485. How did you do that - in what manner?
A.485. I told him he was under arrest.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with Rule of Procedure 83(B).

The witness withdraws.

5th Witness Prosecution — Miss Christina MacKenzie, Housekeeper, Allarburn, Kiltarlity, being duly sworn, is examined by the Prosecutor:

Q.486. What is your full name?
A.486. Christina MacKenzie.

Q.487. And your occupation?
A.487. Housekeeper.

Q.488. For whom?
A.488. For my father.

Q.489. And where do you ~~leave~~ live?
A.489. At Allarburn, Kiltarlity.

Q.490. What business is your father in there?
A.490. He has got a bar - The Shop - a licensed bar.

Q.491. And it is colloquially referred to as MacKenzies Pub?
A.491. Yes, that is right.

Q.492. Where is MacKenzies Pub, as we will call it, in relation to a forestry mill?
A.492. Just situated not very far from the mill.

Q.493. Just situated not very far from the mill, and do you know what the name of that mill is?
A.493. Canadian Forestry Mill.

Q.494. Do you know who operates the mill?
A.494. Canadians.

Q.495. Do you know the accused Private Owens?
A.495. Yes.

Q.496. Do you see him in this court-room?
A.496. Yes. (indicating).

Q.497. Do you recall any event that took place on 14th day of September, 1943, in which the accused Private Owens was involved?
A.497. Yes, I remember him coming into the bar about half-past two, perhaps a little before it - I don't remember - and he said, "Two pints of beer."

Q.498. Two pints of beer?
A.498. Yes.

Q.499. Did he come in alone?
A.499. No, he came in with Private Hayes.

Q.500. And who ordered the beer?
A.500. I think it was Owens ordered the first.

Q.501. The first two?
A.501. Yes.

Q.502. Would that be for himself?
A.502. For himself and Hayes.

Q.503. For himself and Hayes; that would be one apiece?
A.503. Yes.

Q.504. Himself and Hayes?
A.504. Yes.

Q.505. And this would be approximately half-past two?
A.505. Yes, about that.

Q.506. Well now, what happened after that?
A.506. Well, I went out of the bar; my father who was at a funeral came back and went into the bar until closing time at three o'clock.

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Q.507. Yes, did you see the accused Private Owens again that afternoon?
A.507. I think they were sitting there at the back.

Q.508. Do you know?
A.508. I know they were sitting in the back.

Q.509. You saw them out there?
A.509. Yes.

Q.510. And what happened then?
A.510. They were rather rowdy.

Q.511. What time was this?
A.511. Between three and five.

Q.512. Between three and five; what do you mean by "rowdy"?
A.512. Well, they were shouting and I really thought they were having a bit of fun between themselves; and of course the bar opened again at five o'clock and I wasn't in after that, but I could hear them because I was walking about the house.

Q.513. Did you actually see them?
A.513. Yes, I could see them quite well from the scullery.

Q.514. You saw them?
A.514. Yes, in the bar.

Q.515. Anything else take place?
A.515. Then my father came through and complained about the rowdiness they were wrestling and broke the glass, and asked me --

J.A. No.
Q.516. What did you do as a result of what your father told you?
A.516. I went over to the Canadian Mill and found the guard there.

Q.517. You went to the Canadian Mill?
A.517. Yes.

Q.518. How long did it take you to get to the Canadian Mill?
A.518. I should think about two or three minutes.

Q.519. Where was the accused when you went to the Canadian Mill?
A.519. Still in the bar.

Q.520. What time was it when you went to the Canadian Mill?
A.520. Shortly after six.

Q.521. Shortly after six?
A.521. Yes.

Q.522. How many ways are there from your place or from MacKenzies Pub over to the Canadian Mill?
A.522. Of course there is a shortcut through the woods from our place to the mill.

Q.523. Any other way?
A.523. Yes, right up through the village.

Q.524. Any other way?
A.524. I believe there is a shortcut leading off from the small road which connects along our place. I don't know; I never seen it.

Q.525. You don't know. I am going to show you Exhibit "E"; that is a rough sketch; can you identify that sketch?
A.525. Yes, there is the mill - the Scotch Mill.

Q.526. Can you identify what this would be here, marked "H"?
A.526. This is our house.

Q.527. That is your house, and this square piece here, what would that represent?
A.527. That is the field.

Q.528. That is a field; is that actually the correct shape of the field as shown on the sketch?
A.528. I think it is pretty much.

Q.529. You think it is; when you left your house to go to Kiltarlity Mill which route did you take?
A.529. Along here.

Q.530. When you say this route, say from where?
A.530. From the house right through the wood.

Q.531. Will you mark on that sketch by putting your initials the route that you took?
A.531. Put my own initials.
(Witness does as requested)

Q.532. Put your own initials. In looking at that sketch can you show us where there is any other way to approach the Kiltarlity Mill from your house?
A.532. This way, right up in front of the shop.

Q.533. And is there any other way?
A.533. I believe there is.

Q.534. Do you know?
A.534. I don't know really; I have never been that way; I have heard about it.

Q.535. I believe you told the Court that when you left to go to the Canadian Mill, the accused was still in the bar?
A.535. Yes.

Q.536. You went over to the Canadian Mill; who did you see?
A.536. I just passed in between two mills - the Scotch Mill and the big mill and into the millyard to see if I could find the guard. Couldn't find him so walked back and heard somebody shouting and asked if he could tell me where the guard is. Somebody looked up and said, "I am the guard." I recognised Jack Barrett.

Q.537. Did you see anybody else at the mill?
A.537. Yes, I believe after phoning there was a truck left.

Q.538. There was a truck left the mill when?
A.538. Just after we phoned.

Q.539. Did you see how many men were in that truck?
A.539. No, didn't see anybody, just the truck going.

Q.540. Where was the truck when you saw it?
A.540. At the top end of the mill.

Q.541. Can you show us on this sketch again, please. Can you tell us roughly where the truck was?
A.541. I think the truck would be about here wouldn't it.

Q.542. I am not giving the evidence; you tell us where the truck was.
A.542. Near the pond.

Q.543. Just mark in there your idea of the position of the truck.
A.543. Will I put my initials?

Q.544. Yes, put your initials. (Witness does as requested). That where you have put your initials and the mark is your idea of the position of the truck when you saw it?
A.544. Yes.

Q.545. You say the truck moved out?
A.545. The truck moved out, yes.

J.N.M.

Q.527. That is your house, and this square piece here, what would that represent?
A.527. That is the field.

Q.528. That is a field; is that actually the correct shape of the field as shown on the sketch?
A.528. I think it is pretty much.

Q.529. You think it is; when you left your house to go to Kiltarlity Mill which route did you take?
A.529. Along here.

Q.530. When you say this route, say from where?
A.530. From the house right through the wood.

Q.531. Will you mark on that sketch by putting your initials the route that you took?
A.531. Put my own initials.
(Witness does as requested)
Q.532. Put your own initials. In looking at that sketch can you show us where there is any other way to approach the Kiltarlity Mill from your house?
A.532. This way, right up in front of the shop.

Q.533. And is there any other way?
A.533. I believe there is.

Q.534. Do you know?
A.534. I don't know really; I have never been that way; I have heard about it.

Q.535. I believe you told the Court that when you left to go to the Canadian Mill, the accused was still in the bar?
A.535. Yes.

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A.536. I just passed in between two mills - the Scotch Mill and the big mill and into the millyard to see if I could find the guard. Couldn't find him so walked back and heard somebody shouting and asked if he could tell me where the guard is. Somebody looked up and said, "I am the guard." I recognised Jack Barrett.

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A.538. Just after we phoned.

Q.539. Did you see how many men were in that truck?
A.539. No, didn't see anybody, just the truck going.

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A.540. At the top end of the mill.

Q.541. Can you show us on this sketch again, please. Can you tell us roughly where the truck was?
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Q.542. I am not giving the evidence; you tell us where the truck was.
A.542. Near the pond.

Q.543. Just mark in there your idea of the position of the truck.
A.543. Will I put my initials?

Q.544. Yes, put your initials. (Witness does as requested). That where you have put your initials and the mark is your idea of the position of the truck when you saw it?
A.544. Yes.

Q.545. You say the truck moved out?
A.545. The truck moved out, yes.

Q.546. Then how long were you at the Kiltarlity Mill?
A.546. About ten minutes.

Q.547. About ten minutes?
A.547. Yes.

Q.548. Can you tell us exactly what time it was you arrived?
A.548. I'm afraid I can't tell you exactly.

Q.549. Can you tell us approximately?
A.549. Six or just shortly afterwards - six or quarter past.

Q.550. And you found Private Barrett, did you say?
A.550. Yes.

Q.551. Did you have a conversation with Private Barrett?
A.551. I just asked him if he would phone.

Q.552. Then what did you do after the conversation with Barrett?
A.552. Just walked straight back.

Q.553. Over the same way as you came?
A.553. Yes.

Q.554. And what time did you get back to MacKenzies Pub?
A.554. It must have been half-past six.

Q.555. Actually how long would you have been away from the pub?
A.555. About ten minutes or quarter of hour.

Q.556. About ten minutes or quarter of hour?
A.556. Yes.

Q.557. When you got back to the pub did you see the accused?
A.557. No, they were gone when I came back.

Q.558. Did you see them at all?
A.558. No, I didn't see them.

Q.559. Did you see them again that day?
A.559. Yes, I saw Owens crossing the field coming from the direction of the mill.

Q.560. Coming from the direction of the mill?
A.560. Yes.

Q.561. What time was it that you saw Owens coming from the direction of the mill?
A.561. About seven o'clock.

Q.562. About seven o'clock?
A.562. Yes.

Q.563. Was he alone?
A.563. He was alone.

Q.564. What was he - how was he walking across the field?
A.564. He was just walking across the field.

Q.565. Any particular manner?
A.565. No, just walking.

Q.566. Walking towards where?
A.566. Just to the dike; you know where you jump over the dike.

Q.567. To arrive where?
A.567. To arrive out on the road?

Q.568. What road?
A.568. The Kiltarlity road.

D.W.M.

Q.569. Will you show us on the sketch here roughly where Private Owens was when you saw him crossing the field. Show us roughly the route that he took.
(Witness does as requested)
Q.570. That would be roughly the route that he took?
A.570. Yes.

Q.571. Where were you standing?
A.571. The door of the house.

Q.572. I believe you said that was approximately seven o'clock?
A.572. Yes.

Witness cross-examined by Defending Counsel.

Q.573. Miss MacKenzie, you have told us that you went across to the mill that night; you think it was after six or before six?
A.573. After six.

Q.574. But before seven?
A.574. Yes, before seven.

Q.575. Had there been some glass broken in your place that night.
A.575. Yes, there was a glass broken.

Q.576. That was before you went across the mill?
A.576. That was before.

Q.577. After you came back from the mill, did you go back to the bar?
A.577. No, I did not go back to the bar.

Q.578. Were you about the house then?
A.579. I was about the house, yes.

Q.580. Were you outside at all?
A.580. Yes.

Q.581. Tell me, did you meet any other Canadians or were there any other Canadians about the bar?
A.581. Well there was the two that was with the accused - someone came down the road about seven o'clock, a Canadian, and he told me --

Q.582. Just a minute now, you got to know that there was damage done at the mill?
A.582. Yes, this Canadian in a --

Q.583. Now, did you see Owens after that?
A.583. I saw him about seven o'clock at the door crossing the field, after I went to the mill.

Q.584. After you knew that there had been damage done at the mill?
A.584. Yes, yes.

Q.585. You told us that he was just crossing the field in a perfectly normal manner, and then he had to climb a dike?
A.585. Yes.

Q.586. And when he got over the dike where would he be?
A.586. Onto the road.

Q.587. Did you have any talk with him?
A.587. Yes, I talked with him.

Q.588. Did you see any sign of him bleeding or suffering from an injury?
A.588. No.

Q.589. And that was after you knew damage had been done in the mill?
A.589. Yes, after I knew.

Witness re-examined by the Prosecutor.

Q.590. I believe you told me that when you saw Owens crossing the field that you were standing in the doorway of the pub, and that Owens was down at the far corner of the field?
A.590. Yes.

Q.591. You just told my learned friend that you talked to Owens; where were you when you were talking to him?
A.591. At the top of the road; I met him at the top of the road.

Q.592. Where do you mean at the top of the road?
A.592. I met him here (indicating on sketch).

Q.593. After you saw him crossing the field you came down Kiltarlity Road?
A.593. Yes.

Q.594. How long were you talking to him there?
A.594. About two or three minutes.

Q.595. What conversation took place between you?
A.595. I suppose I was annoyed with him because he had promised to keep order in the bar; and spoke to him about that; can't remember exactly what I said to him now.

Q.596. You told my learned friend that you did not notice he had been cut?
A.596. No, I didn't.

Q.597. What examination, if any, did you make of his clothing while you were talking to him?
A.597. I didn't see anything out of the ordinary about his clothing.

Q.598. Did you actually look?
A.598. No, of course I didn't look.

Witness questioned by the President.

Q.599. Tell me - you mentioned to Mr. Burns that you had, that this other lad, this Canadian, had told you about the damage at the mill before you saw Private Owens crossing the field?
A.599. Yes.

Q.600. Can you tell us what time you were first told about the damage; how long after you got back from the mill?
A.600. I am not just terribly sure; it's been such a long time since.

Q.601. Are you are that you did know that the damage was done previous to your actually seeing Owens?
A.601. Yes, definitely sure.

Q.602. You saw Owens around seven o'clock. It couldn't have been very long before that you had heard about it?
A.602. No, I was just after hearing about it as a matter of fact.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with Rule of Procedure 83(B).

The witness withdraws.

6th Witness Prosecution — Donald MacKenzie, General Merchant, Allarburn, Kiltarlity, being duly sworn, is examined by the Prosecutor:

Q.603. Mr. MacKenzie, will you give your full name, please?
A.603. Donald MacKenzie.

Q.604. And your occupation?
A.604. General Grocer.

Q.605. And where do you reside and carry on business?
A.605. Allarburn, Kiltarlity.

Q.606. And in connection with your business, is your place licensed?
A.606. Yes.

Q.607. And you have a small bar?
A.607. Yes.

Q.608. Now where is your place in relation to No. 15 Coy mill? No. 15 Coy Canadian Forestry Corps Mill?
A.608. I would say roughly about a little over a hundred yards from this side of the mill.

Q.609. What side of the mill would that be?
A.609. To the East side.

Q.610. Is it within sight of the mill?
A.610. Yes.

Q.611. Now do you know the accused Private Owens?
A.611. Yes.

Q.612. Can you see him in this court-room?
A.612. Yes.

Q.613. Do you recall on the afternoon of the 14th September any events or circumstances in which the accused Private Owens was involved?
A.613. Well they came - I was away for the day and at twenty minutes past three I went to the bar - ten to three - and they were there.

Q.614. You came back --
A.614. About twenty past three when I came home and went into the bar at ten to three.

Q.615. You came home at twenty after three?
A.615. Twenty to three.

Q.616. And you went into the bar at ten to three?
A.616. Ten to three.

Q.617. Continue.
A.617. They asked for a drink.

Q.618. Who did?
A.618. I can't remember which of them asked for the drink.

Q.619. Was the accused there; was Private Owens there?
A.619. Yes.

Q.620. He was there?
A.620. Yes. I get him a drink - the four of them. Then I went out to the shop, tended the shop. It is, the store is in front.

Q.621. Who were the other three; you mentioned four. Who were the other three?
A.621. Owens, Joe Hayes, Bill Miles - can't remember the fourth, his name, but I know him - Cripps.

Q.622. What name?
A.622. Cripps.

Q.623. And the accused himself?
A.623. Yes.

Q.624. You say this is approximately ten minutes to 3?
A.624. Ten to three.

Q.625. Then what happened after that?
A.625. I came through and shut up the bar at three o'clock.

Q.626. You came through and shut up the bar at three o'clock?
A.626. Yes.

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Q.627. And where did the accused go?
A.627. Round about, outside.

Q.628. Outside where?
A.628. Outside the bar.

Q.629. What was he doing outside the bar?
A.629. I was busy in the store; I couldn't tell you - took no notice.

Q.630. You took no notice?
A.630. No.

Q.631. Do you know whether they stayed outside the bar?
A.631. I beg your pardon?

Q.632. Do you know whether they stayed outside the bar?
A.632. I couldn't say whether they were there all the time; I took no notice after I shut up the bar.

Q.633. When did you reopen the bar?
A.633. Five o'clock.

Q.634. Who came into the bar?
A.634. Same four again.

Q.635. That included the accused Private Owens?
A.635. Yes.

Q.636. What was Private Owens'condition at the time that the bar reopened at five o'clock?
A.636. Quite sober.

Q.637. Quite sober?
A.637. Yes.

Q.638. After the bar reopened at five o'clock these same four came in again; what took place?
A.638. Asked for a drink. I gave them a drink, and then they asked for a second drink, and shortly after that there were only two remained there for the second drink - the other two went away.

Q.639. Do you know what time the other two went away?
A.639. I am not exactly sure of the exact time - about - something before six o'clock - six o'clock.

Q.640. Something before six o'clock or six o'clock?
A.640. I can't tell the exact time; something like that.

Q.641. How did these four men conduct themselves in the bar?
A.641. A bit rowdy.

Q.642. And what did you do in regard to their rowdy conduct?
A.642. I warned them and it didn't take any effect.

Q.643. Did you take any other steps?
A.643. I told my daughter to go to phone to No. 15.

Q.644. Do you know what time that was?
A.644. That would be something like six o'clock or ten past six.

Q.645. About six o'clock or ten past six when you told your daughter to go and phone?
A.645. Yes.

Q.646. Were the four of these men there at that time that you told your daughter to go and phone?
A.646. Yes.

Q.647. Was Private Owens among them?
A.647. Yes.

Q.648. Then did your daughter go?
A.648. Yes.

Q.649. Then what happened?
A.649. Well, she came back; I asked her --

Q.650. Just a minute; what happened after your daughter left?
A.650. The two others went out.

Q.651. Do you know which two went out?
A.651. Yes, Joe Hayes and Ernie --

Q.652. Ernie who?
A.652. Ernie - I have forgotten the name.

Q.653. Is he in the court-room?
A.653. Yes.

Q.654. The accused, you mean?
A.654. Yes.

Q.655. Ernie Owens?
A.655. That is right.

Q.656. Joe Hayes and Ernie Owens left the bar after your daughter went out?
A.656. Yes.

Q.657. I believe you said she left around six or six ten?
A.657. That is right.

Q.658. Did you see where Private Owens went to after he went out?
A.658. Shortly after they went out I went out and seen them going along the path leading to the mill.

Q.659. Saw them going along the path leading to the mill?
A.659. Yes.

Q.660. I am going to show you a rough sketch, Mr. MacKenzie. I want you to look at it. This is Exhibit "E"; can you show us on the sketch roughly which way Private Owens left your place?
A.660. This is the mill?

Q.661. That is the mill; that word is "Garage" there.
A.661. This is the store.

Q.662. Could you identify that from the sketch as being the store?
A.662. Yes.

Q.663. Which way was it that Private Owens was proceeding when you saw him going towards the mill?
A.663. This will be the shop - the path leading to the mill.

Q.664. How many paths are there leading to the mill?
A.664. Just one short path leading from my premises.

Q.665. Any other path?
A.665. I couldn't say.

Q.666. You couldn't say?
A.666. No.

Q.667. Where did you see them?
A.667. The path they always take, the ones coming back and forth to my place.

Q.668. Can you show us on there where you actually saw Private Owens when you saw him walking towards the mill?
A.668. This will be the gate. Down at this gate about fifty yards, forty yards, thirty or forty yards from the premises. There is a gate there at the path. Then they went on the path through this gate and then in that direction out of my sight.

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Q.669. Again roughly, as accurately as you can remember, what time was that?
A.669. That would be something after six o'clock.

Q.670. Was Private Owens alone?
A.670. Not going away on the path; Joe Hayes was along with him, the two of them.

Q.671. What was their condition?
A.671. Quite alright.

Q.672. When they were proceeding towards the mill?
A.672. Quite alright.

Q.673. When you say "quite alright" what do you mean?
A.673. Sober.

Q.674. They were sober?
A.674. Yes.

Q.675. When Private Owens and Private Hayes left for the - in the direction of the mill, had your daughter returned?
A.675. Shortly after they left.

Q.676. Shortly after they left?
A.676. Yes.

Q.677. And did you see Private Owens again that evening?
A.677. Yes, later on.

Q.678. How much later on?
A.678. Something like half-past seven or eight.

Q.679. Something like half-past seven?
A.679. Of course I didn't look at the time exactly - just roughly say between seven or eight - half-past seven.

Q.680. Where did you see Private Owens?
A.680. I was standing out in front of the store, out from the store to the end of the store facing the field - there is a little field there opposite our place. Well I happened to see Ernie Owens walking up through this little field with a lame step. Joe Hayes passed round the back past the shop right up onto the main road.

Q.681. You saw Private Owens walking across the field with a lame step?
A.681. Yes.

Q.682. You saw Private Hayes walking around -
A.682. He came round the shop and took the main road.

Q.683. From what direction was Private Owens and Hayes coming?
A.683. From, when I saw them, looked as though coming from the path from the mill.

Q.684. I show you this sketch again, Mr. MacKenzie. Can you show us roughly on that sketch where you saw Private Owens?
A.684. If this is the field he was making up through the field onto the main road; this will be the highway - the road. He was cutting along from the path right along up this way.

Q.685. Cutting along from the path?
A.685. Yes, I seen him about here and turned my eyes and saw Joe Hayes. That is the last I seen of them.

Q.686. Did you speak to them at that time?
A.686. No, no.

Q.687. You mentioned that Private Owens was walking with a lame step?
A.687. Yes.

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Q.688. Just how did you arrive at that conclusion?
A.688. I just seen him limping.

Q.689. He was limping?
A.689. Yes.

Q.690. By the way, Mr. MacKenzie, on that sketch there, this space that you refer to as a field in front of your place. Does that look like the shape of it on that sketch?
A.690. Looks like it, yes.

Witness cross-examined by Defending Counsel.

Q.691. Mr. MacKenzie, you hold a license, don't you?
A.691. Yes.

Q.692. Under the Licensing Branch?
A.692. Yes.

Q.693. Is this license restricted to beer and porter?
A.693. Yes.

Q.694. Not a full license?
A.694. No.

Q.695. And you conform to the hours, of course?
A.695. Yes.

Q.696. And you would shut in the afternoon at three o'clock?
A.696. Yes.

Q.697. You shut on this particular afternoon at three o'clock, didn't you?
A.697. Yes.

Q.698. You had just come back from a funeral?
A.698. Yes.

Q.699. Do you know whether these men had gotten glasses outside?
A.699. Yes.

Q.700. Would that be half-pint glasses?
A.700. Pint glass.

Q.701. They were not in the habit of drinking half-pints?
A.701. No, some of them.

Q.702. You told us that they came back later on and somewhat after six o'clock you sent your daughter along to the mill?
A.702. Yes.

Q.703. You have told us that the reason for that was that you wished to have these men picked up by the coy wasn't it. You wanted to have them taken away?
A.703. Yes, certainly.

Q.704. The reason for that was they were rowdy?
A.704. Yes.

Q.705. And had they done some damage?
A.705. They broke a glass.

Q.706. Anything else?
A.706. That is all they did.

Q.707. Wasn't it quite obvious they were getting quite unmanageable from your point of view?
A.707. Yes.

Q.708. They were absolutely?
A.708. They started wrestling between themselves and jumping about.

Q.709. From your - as a licensee it appeared to you they were unmanageable?
A.709. No, they were not unmanageable.

Q.710. It did not appear to you as you remember it there would be serious damage done?
A.710. It might come to that.

Q.711. Were you afraid of that?
A.711. Yes.

Q.712. Is it a normal thing - damage done in licensed places by sober people?
A.712. Yes.

Q.713. You tell the Court it is quite normal for people to be in your pub and for them to do damage?
A.713. Yes. I have seen it done.

Q.714. I am putting it to you, Mr. MacKenzie, that one reason, and the only reason, why you sent your daughter to the mill was that these men were showing signs of being under the influence of drink?
A.714. They might be showing the effects.

Q.715. So that they weren't entirely sober, were they, at that time?
A.715. I couldn't say that they were drunk.

Q.716. Would you have supplied them with any further liquor?
A.716. No.

Q.717. And why would you not have supplied them with any further liquor?
A.717. Well, if they - yes - if they would behave themselves. It is for the sake of that I wasn't going to supply them with an liquor.

Q.718. It seems to me that if a man is sober you are bound to supply him with liquor; you cannot refuse?
A.718. Yes.

Q.719. Isn't it true you wouldn't have given these men any more liquor, particularly Owens?
A.719. He was getting his liquor.

Q.720. So you continued to supply them?
A.720. Yes.

Q.721. But at the same time you sent your daughter to the authorities to ask to have them removed?
A.721. Yes.

Q.722. Do you know which way your daughter went to the mill to phone; did she take the shortcut?
A.722. No, I couldn't tell you - couldn't answer that question.

Q.723. Did you see Owens leave the pub?
A.723. Yes.

Q.724. And did he go - which way did he go - can you answer that question?
A.724. Yes, along beside the stream running from our place just three or four yards from the gate.

Q.725. Would that take him back to the mill?
A.725. Back to the mill, yes, that would take him to the mill.

Q.726. Is that the usual route people take to go to the mill?
A.726. There is two ways; that is the short way.

Q.727. This is the shortcut?
A.727. Yes, a shortcut.

R.M.M.

Q.728. Is that the route your daughter took?
A.728. I couldn't tell you; I was inside the bar when she went, I couldn't see which way she went.

Q.729. You have told us that subsequently, at a subsequent hour, you saw these two - saw Owens again?
A.729. Yes.

Q.730. Well now, he was alone on this occasion?
A.730. Yes.

Q.731. He left your pub by the shortcut; was Hayes with him?
A.731. Yes.

Q.732. But subsequently, when you saw him later on in the evening he was alone, and you told us between 7:30 and 8:00 o'clock.
A.732. That is right.

Q.733. You told us he was limping?
A.733. Yes.

Q.734. There wouldn't be any doubt he was limping, quite a definite limp?
A.734. Yes, I doubt he was limping.

Q.735. Perhaps you misunderstand me; have you any doubt he was lame? Was it quite obvious; anybody could have seen?
A.735. Yes, a distinct limp.

Q.736. Did you think perhaps something had happened to him?
A.736. No.

Q.737. You never thought anything about it?
A.737. No, never thought anything.

Q.737. Did you think he was drunk?
A.737. No.

Q.738. At that time he was making for the main road?
A.738. For the main road.

Q.739. And you have pointed that out on the sketch?
A.739. Yes.

Q.740. Supposing you heard subsequently that he went to the Nurse's house, would he be making in that direction when you saw him?
A.740. I couldn't say because I took my eyes off him, Sir.

Q.741. He could have been going to the Nurse's house?
A.741. Oh yes, if he could get that way.

Q.742. Any other particular way that he could have got nearer to the nurse's house?
A.742. Yes, he could get another way to the nurse's house.

Q.743. You say you saw Hayes coming up, and where was he making for?
A.743. Right round past me to the road leading from the pub.

Q.744. Did you have any conversation with him?
A.744. He never said nothing to me and I never said nothing.

Witness re-examined by the Prosecutor.

Q.745. When you saw Private Owens crossing the field, do you know whether he saw you?
A.745. I couldn't say.

Q.746. Did you notice whether he looked at you?
A.746. No.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with Rule of Procedure 83(B).

The witness withdraws.

7th Witness Prosecution — G-48106 Private Manford Perley Stewart, Driver, No. 15 Coy Canadian Forestry Corps, being duly sworn, is examined by the Prosecutor:

Q.747. What is your regimental number, full name, rank and unit, please?
A.747. G-48106 Private Manford Perley Stewart, No. 15 Coy.

Q.748. What is your occupation with No. 15 Coy?
A.748. Driver.

Q.749. Do you recall on the afternoon of the 14th September seeing the accused Private Owens?
A.749. Yes, Sir.

Q.750. Do you know the accused?
A.750. Yes, Sir.

Q.751. Is he in the court-room at the present time?
A.751. Yes, Sir.

Q.752. Where did you see the accused on that afternoon?
A.752. Down at Kiltarlity, Sir.

Q.753. Where at Kiltarlity?
A.753. Down there in front of the post office.

Q.754. And where is the post office in relation to the Kiltarlity Mill?
A.754. About three hundred yards this way.

Q.755. What time was it that you saw Private Owens?
A.755. I couldn't say, Sir.

Q.756. Can you give me some idea?
A.756. Around seven, I would say.

Q.757. Are you sure it was around seven?
A.757. I couldn't swear to it, Sir.

Q.758. Under what circumstances was it that you saw Private Owens?
A.758. He was just leaning up against the fence.

Q.759. Who were you with?
A.759. With Private Arsenault, Sir.

Q.760. What were you doing?
A.760. We were going out to work on a tractor.

Q.761. Were you walking?
A.761. No, Sir.

Q.762. How were you moving?
A.762. In a truck.

Q.763. You had a truck; what way were you proceeding?
A.763. Going out to the Drumnadrochit Road.

Q.764. And following that route would you pass the Kiltarlity Mill?
A.764. Yes, Sir.

Q.765. You say you saw Private Owens leaning up against the fence?
A.765. Yes, Sir.

Q.766. Did you talk to Private Owens?
A.766. No, Sir.

Q.767. You didn't; did Private Arsenault talk to Private Owens?
A.767. No, Sir.

Q.768. Did you stop the truck?
A.768. Yes, Sir.

Q.769. You did, why?
A.769. I wasn't driving, Sir, the other fellow stopped.

Q.770. Was Private Arsenault driving?
A.770. Yes.

Q.771. Did you have any conversation with Private Owens that afternoon?
A.771. No, Sir.

Q.772. What was Private Owens condition at that time?
A.772. Couldn't say, Sir.

Q.773. How long did you stop there?
A.773. About a couple of minutes.

Q.774. You don't know what his condition was?
A.774. Couldn't say, Sir.

Q.775. Did you notice anything peculiar in connection with him?
A.775. No, Sir.

Defending Counsel declines to cross-examine this witness.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with Rule of Procedure 83(B).

The witness withdraws.

8th Witness Prosecution

G-48122 Private George Arseneault, No. 15 Coy Canadian Forestry Corps, being duly sworn, is examined by the Prosecutor:

Q.776. What is your regimental number, name, rank and unit?
A.776. G-48122 Private George Arseneault, No. 15 Coy C.F.C.

Q.777. Do you know the accused Private Owens?
A.777. Yes, Sir.

Q.778. Is he in the court-room?
A.778. Yes, Sir.

Q.779. Do you recall the afternoon of the 14th September seeing Private Owens?
A.779. Yes, Sir.

Q.780. Under what circumstances did you see him?
A.780. I couldn't say; just saw him.

Q.781. Where did you see him?
A.781. Down at Kiltarlity Village.

Q.782. Where was he?
A.782. In front of MacKenzies gate.

Q.783. Where were you?
A.783. I was going to do a job up in the bush.

Q.784. How were you going?
A.784. Truck.

Q.785. Who was with you?
A.785. Stewart.

Q.786. And where were you going from?
A.786. From 15 Coy.

Q.787. 15 Coy; did you stop the truck?
A.787. Yes, Sir.

Q.788. Why did you stop the truck?
A.788. To talk to Private Hayes.

Q.789. Was Private Owens present?
A.789. I beg your pardon, Sir.

MHB.

Q.790. Was Private Owens present?
A.790. He was not present where I stopped the truck.

Q.791. Was Private Owens present shortly afterwards?
A.791. Yes, Sir.

Q.792. Where was Private Owens when you stopped the truck first?
A.792. I didn't see him.

Q.793. Where was the truck stopped first?
A.793. At the telephone booth.

Q.794. Then what did you do?
A.794. I went on to the MacKenzies gate.

Q.795. You drove on to MacKenzies gate?
A.795. Yes.

Q.796. Where was Private Hayes?
A.796. In the truck.

Q.797. Then you saw Private Owens at MacKenzies gate?
A.797. Yes, Sir.

Q.798. What did you do then?
A.798. I went on to my work.

Q.799. Did you stop the truck again?
A.799. Yes, Sir.

Q.800. Did any conversation take place between either you and Private Owens or you and Private Hayes when Private Owens was present?
A.800. I had no conversation with Owens, but with Hayes.

Q.801. What did Private Hayes say, and was Owens present?
A.801. Yes.

Q.802. What did Private Hayes say?
A.802. Wanted me to take Owens to the Doctor in Beauly.

Q.803. Did he say what Doctor?
A.803. No, Sir.

Q.804. He didn't; what provisions are there for medical attention in No. 15 Coy?
A.804. Medical attention?

Q.805. What provisions are there for medical attention in No. 15 Coy?
A.805. I don't know exactly what you mean.

Q.806. If a person gets hurt or sick at No. 15 Coy what provision is made for looking after them?
A.806. Well, just call the camp.

Q.807. Call who?
A.807. Call the camp.

Q.808. Who looks after him?
A.808. The Medical sergeant.

Q.809. What does the Medical sergeant do with the case?
A.809. He looks after the case.

Q.810. Is there a Doctor at No. 15 Coy?
A.810. No, Sir.

Q.811. Know where the nearest Doctor is?
A.811. I think I do.

Q.812. Where?
A.812. At 16.

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Q.813. And when Private Hayes stopped you in the presence of Private Owens he asked you to take him to Beauly; is that right?
A.813. Owens wasn't right there at the time; he was at the back of the truck.

Q.814. He was at the back of the truck, and where was Hayes?
A.814. He was in the front.

Q.815. And Owens was in the back of the truck; both of them got in the truck?
A.815. Hayes wasn't in the truck then - just side of the truck.

Q.816. What did you do after they made that request?
A.816. I said I wouldn't do it and just went on to my work.

Q.817. You wouldn't go - meaning where?
A.817. To Beauly.

Q.818. What happened then?
A.818. Left them there and went on.

Q.819. Left them there in front of MacKenzies, is that right?
A.819. Yes, Sir.

Q.820. Did you see either of them again that night?
A.820. No, Sir.

Q.821. Didn't see either of them?
A.821. No, Sir.

Q.822. You say that you proceeded on your job?
A.822. Yes, Sir.

Witness cross-examined by the Defending Counsel.

Q.823. One point; you had some conversation you told us with Hayes, but no conversation with Owens, the accused?
A.823. Yes, Sir.

Q.824. When Hayes asked you to take Owens to Beauly was he in the truck with you?
A.824. No, Sir.

Q.825. Where was he?
A.825. He was standing beside the truck.

Q.826. Was Owens with him or within hearing?
A.826. Owens was in the back of the truck.

Q.827. In the truck?
A.827. In the truck.

Q.828. In the truck, in the back, but you said you weren't going to take him?
A.828. No, Sir.

Q.829. Were they quite sober, do you know?
A.829. I never noticed that sort of thing.

Witness re-examined by the Prosecutor.

Q.830. Do you know what time it was, roughly, that you met Hayes and Owens?
A.830. 7:30.

J.A. This is re-examination; there has been nothing brought out by Counsel in cross-examination about time.

Q.831. Do you know whether Owens was in a position to hear the conversation between you and Hayes?
A.831. I couldn't tell you.

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Q.832. You don't know whether he could?
A.832. No, Sir.

Witness questioned by the Court.

Q.833. Why did you refuse to take Owens to Beauly?
A.833. Right in front of MacKenzies gate.

Q.834. Why did you?
A.834. It wasn't on my beat, Sir.

Q.835. At what time did you see Owens and Hayes?
A.835. Approximately 7:30.

Q.836. 7:30?
A.836. Yes.

Witness questioned by the Judge-Advocate.

Q.837. What kind of truck was this you were driving?
A.837. Ford truck.

Q.838. Three ton?
A.838. Yes.

Q.839. Was it covered?
A.839. No.

Q.840. Not covered?
A.840. Not covered.

Q.841. Completely open?
A.841. Just the side board on.

Q.842. Was Owens how far away from Hayes?
A.842. Was he far away?

Q.843. How far away was he? How many feet?
A.843. About fourteen feet.

Q.844. Where was Owens, in the very back of the truck?
A.844. In the back of the truck.

Q.845. And Hayes was where?
A.845. In the front - he was standing alongside.

Q.846. Standing alongside the driver's seat?
A.846. Yes.

Q.847. Did Hayes ~~ask~~ tell you why he wished you to take Owens to a Doctor?
A.847. No, Sir.

Q.848. What was that?
A.848. He never said nothing about it.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with Rule of Procedure 83(B).

The witness withdraws.

9th Witness Prosecution — Mrs. Elizabeth McGregor, District Nurse, Kiltarlity, being duly sworn, is examined by the Prosecutor:

Q.849. Mrs. McGregor, your full name, occupation, and residence, please.
A.849. Mrs. Elizabeth McGregor, District Nurse, Woodside, Kiltarlity.

Q.850. Where do you practice your profession?
A.850. In the District of Kiltarlity.

Q.851. Where is your office in relation to the Kiltarlity Mill, Canadian Forestry Mill.

A.851. The mill is just across the road from my house.

Q.852. Do you know the accused Private Owens?
A.852. Yes.

Q.853. He is in the court-room at the present time?
A.853. Yes.

Q.854. Do you recall any circumstances which occured on the afternoon or evening of the 14th September in which the accused Private Owens was involved.
A.854. Well at some time after 7:15, between 7:15 and 7:30, I think, the bell rang and on going to the door found Private Hayes and Private Owens there, and they asked me if I would attend to Private Owens' leg; he needed assistance. They came in - brought him in and I saw the wound, dressed it and said that he required a Doctor because it needs stitches.

Q.855. What type of wound was it?
A.855. Well, the wound itself was high up on the right thigh on the inside slightly transverse, clean cut about two inches in length.

Q.856. And could you give any idea of the depth of the wound?
A.856. About, through the skin and fat tissue to the muscle, one-quarter to half an inch, I should think.

Q.857. And had there been any bleeding to any extent?
A.857. A great deal of bleeding; his trouser leg was quite covered with blood.

Q.858. And what did you do to the wound?
A.858. Well, cleaned up round about the wound so far as possible, and since he had informed me that it had been done by glass I had a good look in case of pieces or dirt, but the wound appeared perfectly clean.

Q.859. You say he informed you that the wound was caused by glass. Can you recall just the conversation that took place with regard to that?
A.859. Well, I was told they were on their way home to camp; he had fallen in a ditch and cut his leg on a piece of glass.

Q.860. Told you that they were on the way home to camp and he had fallen into the ditch and cut his leg?
A.860. Yes.

Q.861. Can you describe just where on the leg that the wound was?
A.861. Why, up on the right thigh, little to the inside.

Q.862. The wound wasn't straight up and down the thigh; it was transverse?
A.862. Yes.

Q.863. You probed the wound; did you clean it?
A.863. I didn't need to probe it; I could see by holding it in my fingers I could open it sufficiently to see right down to the muscle; I didn't need to probe it.

Q.864. What foreign matter if any was in the wound?
A.864. None whatsoever; perfectly clean.

Q.865. What conversation, or other conversation took place between the accused and yourself or Hayes and yourself in the accused' presence?
A.865. Well the accused himself didn't say anything, but when I suggested they would have to get a Doctor because it needed stitches Private Hayes said to get Doctor Leitch.

Q.866. Doctor Leitch; where does Doctor Leitch practice?
A.866. At Beauly.

Q.867. Is Dr. Leitch a Canadian Army Doctor?
A.867. No, Sir.

Q.878. Is he an army Doctor?
A.878. He did inform me himself, Dr. Leitch, that he had to visit the auxiliary hospital;that is all I know about what he had to do with the army.

Q.879. When Hayes suggested Leitch be called in, what was your reaction to that?
A.879. I thought Dr. Leitch would not handle it as you have your own army Doctor. Told Hayes and he said he would go over and phone to camp so I left that up to him.

Q.880. Did any further conversation take place between you and Private Hayes in Owens' presence with regard to obtaining the Doctor?
A.880. I don't think so, Sir, that was all.

Q.881. Then how long did Private Owens and Private Hayes stay on your premises?
A.881. Well, I imagine it would be nearly half-hour, I should think; by the time I got it dressed and the truck came.

Q.882. And who came with the truck?
A.882. I didn't know the men; there were a few; didn't know any of them.

Q.883. Where was Private Hayes when the truck came?
A.883. He had left before that time; he left before I finished dressing Private Owens.

Q.884. He left before you finished?
A.884. Yes.

Q.885. When Private Owens came to your place, how was he dressed?
A.885. In his working clothes.

Q.886. I am producing and showing to you Exhibit "K"; could you identify these?
A.886. Well they were trousers.

Q.887. And is there anything about these particular trousers which could be of assistance to you in the identification of it?
A.887. Only that would be about where the wound would be in his leg.

Q.888. When you say, "That would be about"/what do you mean by that?
A.888. I imagine if they were not --

Q.889. But you said, "That would be about where the wound was in his leg"; what are you referring to?
A.889. I mean this split in the trousers.

Q.890. Now when Private Owens and Private Hayes were on your premises, what was their condition; what particularly was the condition of Private Owens?
A.890. Well, Private Hayes informed me --

Q.891. Was Private Owens present?
A.891. Yes, they were both there -- that they had been drinking. He said himself, "You can see that we have been drinking."; but while they were in the house their conduct and speech was quite in order.

Q.892. If Private Owens hadn't told you that would you know they had been drinking?
A.892. Yes.

Q.893. What would have led you to believe that?
A.893. They were staggering slightly, and by the sense of smell.
Witness cross-examined by Defending Counsel.
Q.894. You formed the impression they had been drinking some?
A.894. Yes.

Q.895. I don't think you would say they were hopelessly drunk?
A.895. No, not hopelessly drunk.

Q.896. There was evidence of drink about them?
A.896. Yes.

Q.897. Would it be true also to say Hayes was the man doing most of the talking and arranging?
A.897. Yes.

Q.898. Is it the case that Dr. Leitch is a well known name around here; in point of fact if there was no military Doctor available, would he be the nearest civilian Doctor?
A.898. Dr. Leitch and Dr. Kennedy live close.

Q.899. He is the nearest?
A.899. Yes, he is the nearest.

Q.900. There was nothing peculiar about that if there was no military Doctor available. Did it appear to you when Owens came into you that this wound had been very recently made?
A.900. The blood was quite fresh and it was still flowing.

Q.901. And they came into you about 7:30 - what time?
A.901. Some time between 7:15 and 7:30.

Q.902. You did agree with me it was a very recent injury?
A.902. Yes.

Q.903. Would you also agree with me that owing to the explanation that he had fallen and had cut himself with some glass?
A.903. Yes, I thought that was quite a feasible explanation.

Q.904. You thought that was quite a feasible explanation?
A.904. Yes.

Q.905. You saw no reason to doubt that?
A.905. Well a very fine piece of glass smooth edged could have done it.

Q.906. For instance, a pint glass?
A.906. What, Sir?

Q.907. A pint glass - a beer glass?
A.907. Oh yes.

Q.908. That might explain it?
A.908. Yes.

Q.909. Or a sharp instrument?
A.909. Yes.

Q.910. But you thought the wound in point of fact was clean?
A.910. Yes, it was clean because I paid particular attention to it.

Q.911. You then put a dressing on it?
A.911. Yes.

Q.912. I am going to tell you that there was a Doctor in that said there was some grit in it when it was dressed; you didn't see that?
A.912. No.

Q.913. It may have been deeper than you realized?
A.913. I don't think so. I got Private Hayes to hold the light; I could see the muscle.

Q.914. If there was some grit found in the wound it would make it all the more feasible,this explanation of this man falling on the road in the ditch?
A.914. Yes.

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Q.915. By the time he got to you his trouser leg was covered with blood?
A.915. Yes.

Q.916. From the amcunt of blood that was on his trousers, how long would you say the wound had been bleeding?
A.916. It couldn't have been very long, perhaps within an hour perhaps.

Q.917. Within an hour?
A.917. Yes.

Q.918. It could have been bleeding that long?
A.918. Well his trouser - there was a lot of blood on it right down his leg. Yes, I think perhaps an hour likely.

Witness re-examined by the Prosecutor.

Q.919. My learned friend asked you with regard to the condition of his clothing and as to whether or not it coincided with the story that Private Owens told you that he fell in a ditch; and I am not quite clear on the answer. Did Private Owens' clothing show signs of having fallen in a ditch?
A.919. No, I can't say I saw anything on his clothing apart from oil and blood; I didn't see any other dirt of any kind.

Q.920. You didn't see any other dirt of any kind?
A.920. No.

Witness questioned by the President.

Q.921. Nurse, was the cut a straight cut or a circular cut?
A.921. Straight.

Q.922. If it had been caused by a broken glass or bottle, would you expect a cut like that or a curved cut?
A.922. Well, it is very difficult to say; as I say, it would have to be a very fine piece of glass to make such a clean cut because it is quite smooth.

Q.923. Do you think it would be more like a knife or piece of glass?
A.923. As I said before - a wound like we see in a hospital - an incision made by a knofe.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with Rule of Procedure 83(B).

The witness withdraws.

10th Witness Prosecution

G-5095 Private Jack Barrett, No. 15 Coy Canadian Forestry Corps, being duly sworn, is examined by the Prosecutor:

Q.924. What is your regimental number, full name, rank, and unit?
A.924. G-5095 Private Jack Barrett.

Q.925. And Unit?
A.925. 15 Coy Canadian Forestry Corps.

Q.926. Do you know the accused, Private Owens?
A.927. I do.

Q.928. Is he in the court-room at the present time?
A.928. Yes.

Q.929. Do you recall on the evening of September 14th being on duty at Kiltarlity Mill?
A.929. Yes, Sir.

Q.930. What were your duties in the mill on that evening?
A.930. My duties was looking after the steam boiler and cleaning up around the Scotch Mill; was looking after the big mill for fire - as a guard.

Q.931. What time did you come on duty?
A.931. Six o'clock.

Q.932. Six o'clock; now at the time that you came on duty who was on the premises of the Kiltarlity Mill?
A.932. I couldn't say, Sir, who all was on the premises at that time. The mill was still - at least the mill crew was still at the mill.

Q.933. At six o'clock?
A.933. Well, at my recollection it had just stopped, but the crew had not left the mill when I first went there.

Q.934. How do you fix it in your mind it was six o'clock?
A.934. Six o'clock is the time that the mill stopped, and it had just stopped, or at least the crew had just started for the trucks when I went to the office.

Q.935. Yes, and what did you do after you came on the job?
A.935. The first thing after I went on the job I cleaned the tubes of the boiler.

Q.936. Where?
A.936. In the Scotch Mill.

Q.937. And who was on the premises then?
A.937. At that time, just myself.

Q.938. Just yourself; did you make a round of the premises?
A.938. I did.

Q.939. Did you see the accused that evening?
A.939. I did.

Q.940. Where and under what circumstanced did you see the accused?
A.940. Just at the rear of the Scotch Mill shed looking out the door.

Q.941. Was the accused alone?
A.942. No.

Q.943. Who was with him?
A.943. Private Hayes.

Q.944. What were they doing there?
A.944. Standing talking.

Q.945. Did you hear their conversation?
A.945. No, Sir.

Q.946. Did you speak to them?
A.946. Yes, Sir.

Q.947. What conversation took place between you and them?
A.947. Just saw Private Owens - spoke to me, said, "Hello Jack"; I said, "Hello Ernie."

Q.948. Can you tell us about what time this was?
A.948. Some time between six and seven o'clock; I do not know just the exact time.

Q.949. Can you give us any idea how long it was after you went on the job?
A.949. No, I couldn't say what time it was.

Q.950. You think it was some time between six and seven o'clock?
A.950. Yes, Sir.

Q.951. That you saw them?
A.951. Yes, Sir.

Q.952. What did they do after they said "Hello" to you?
A.952. They started down towards the woods.

Q.953. Which woods?
A.953. At the west side of the Scotch Mill boiler.

Q.954. I am showing you Exhibit "E" which is a rough sketch; take it and see if you can identify the things that are drawn on there?
A.954. Yes, Sir.

Q.955. Now you will notice of this exhibit on this sketch, it shows Kiltarlity Mill, and at one end a log pond, and on one side of the mill the thing that is marked Scotch Mill; is that right?
A.955. Yes, Sir.

Q.956. Then on the opposite side of the mill is the pile lot. I would like you to show the Court on this sketch just exactly where it was you saw Private Owens and Private Hayes when they were talking,and also show the direction that Private Owens and Private Hayes took after they had finished talking to you.
A.956. There is a door sits on this side of the boiler-room on the west side,a road running by the back. They were opposite the door. After I spoke to them they started down (indicating) which is woods on this side.

Q.957. Just draw the line.
A.957. This is the side of the woods, came from the road coming this way, were standing about here; as soon as I got there they started off towards the wood.

Q.958. Did you see where they went after they went in the woods?
A.958. No, Sir.

Q.959. Will you put your initials on here?
A.959. Yes, Sir.

Q.960. Mark here with an "X" where you saw them and put your initials. And from where you saw them and from where they said "Hello" to you on the west side of the Scotch Mill, they proceeded to walk in the directions of the woods?
A.960. Yes, Sir.

Q.961. And then I think you said you didn't see them after that?
A.961. No, Sir.

Q.962. Did you see them again that day at all?
A.962. No, Sir.

Q.963. Did you see from where they had come?
A.963. No, Sir.

Q.964. I hadn't finished asking the question. Did you see from where they had come when you heard them talking?
A.964. No, Sir.

Q.965. Do you know whether there were any other persons on the premises at that time?
A.965. I could not say.

Q.966. After you had come on duty and before you saw Private Owens and Private Hayes, did you speak to anyone else on that part?
A.966. Before I came on duty, Sir?

Q.967. No, after you came on duty but before you had seen Private Owens and Private Hayes?
A.967. Not after they left. There was a Miss MacKenzie came there and asked me to phone the coy and have someone go down and get some--

J.A. Was the accused there at the time when Miss MacKenzie talked to you?
Witness. No, Sir.

J.A.M.

Q.968. Then Miss MacKenzie did come on the premises?
A.968. Yes, Sir.

Q.969. And were you speaking to Miss MacKenzie?
A.969. Yes, Sir.

Q.970. And as a result of what she told you what did you do?
A.970. I went to the office and called the Sgt.Major of 15 Coy.

Q.971. You called the Sgt.Major of 15 Coy?
A.971. Yes, Sir.

Q.972. How longwas it after your conversation with Miss MacKenzie that you saw Private Owens and Private Hayes?
A.972. I could not say exactly.

Q.973. Could you give an estimate?
A.973. It could beahalf-hour.

Q.974. It could be a half-hour?
A.974. Yes, Sir.

Witness cross-examined by Defending Counsel.

Q.975. When you saw the accused Owens that evening, you say that you cannot tell us whether there was anybody else about the building?
A.975. No, Sir.

Q.976. And Owens and Hayes were there quite openly?
A.976. Yes, Sir.

Q.977. I mean they weren't hiding?
A.977. No.

Q.978. Quite openly?
A.978. Yes, Sir.

Q.979. Did you have some conversation with him?
A.979. Just spoke to him.

Q.980. Did you have them in full view?
A.980. Yes, Sir.

Q.981. Did you see anything wrong with them?
A.981. No, Sir.

Q.982. You didn't see any blood, for instance, on Owens?
A.982. No, Sir.

Q.983. That was, you say, between six and seven?
A.983. Yes, Sir.

Witness re-examined by the Prosecutor.

Q.984. When Owens and Hayes were talking to you outside of the Scotch Mill, who were you talking to, or who was talking to you?
A.984. Talking to nobody, Sir, just spoke to Private Owens.

Q.985. Actually then, how long were they in your vision?
A.985. Not over two or three minutes.

Q.986. You say you did not notice any blood?
A.986. No, Sir.

Q.987. Were you looking for any blood?
A.987. No, Sir.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with Rule of Procedure 83(3).

The witness withdraws.

11th Witness Prosecution

Major Duncan A. McPhail, No. 15 Coy Canadian Forestry Corps, being duly sworn, is examined by the Prosecutor:

Q.988. Major McPhail, will you give your rank, full name?
A.988. Major Duncan A. McPhail, O.C., No. 15 Coy Canadian Forestry Corps.

Q.989. And where is No. 15 Coy Canadian Forestry Corps located?
A.989. In the Parish of Kiltarlity.

Q.990. And what duties does No. 15 Coy perform?
A.990. They have a certain logging operation and they jointly operate Kiltarlity Mill with No. 18 Coy.

Q.991. What do they produce?
A.991. They produce sawn timbers of various dimensions, a certain amount of poles and other timber products.

Q.992. For whom?
A.992. For the Ministry of Supply.

Q.993. As C.O. of No. 15 Coy you are familiar with the machinery used in the Kiltarlity Mill; is that right?
A.993. Yes, to a certain extent.

Q.994. Do you recall, Major McPhail, on the 14th September, 1943, viewing damage that had been done to machinery and equipment in the Kiltarlity Mill?
A.994. On the 14th September. I believe the damage was done on the evening of the 14th September and I was not in the mill until the morning of the 15th - until next morning.

Q.995. And do you recall what the damage was that was done?
A.995. I don't recall all the damage,but I recall certain of the belts that were cut and certain items on the engines that were damaged.

Q.996. Can you recount those?
A.996. The - both the belts driving the head saws were cut; two main belts driving the head saws were cut, and both the auxiliary belts driving carriages were cut, and a corner drive belt that drives the resaw was cut, and - I don't believe I can state definitely what other belts were cut - I am not sure; but I can state definitely there were others and that those belts I mention were cut, several of them in more than one place.

Q.997. With regard to the power plants in the said mill?
A.997. The ignition wires on both motors were cut and certain fuel lines on one of the motors were torn off, the number of that motor I don't remember, and there was a fuel line broken on the Ruston Hornsby engine.

Q.998. Major McPhail, I am showing to you Exhibit "G" in this case. Can you identify this exhibit?
A.998. It is belting that is identical with belting used in the Kiltarlity Mill and damaged that night. Those are the ignition part of the ignition wires off that - identical with that cut and torn off the engines, and I believe I remember picking up this piece of 3/4 piece cut off a belt picked up that evening.

Q.999. That evening of the 15th or evening of the 14th?
A.999. Picked up the morning of the 15th.

Q.1000. And I am showing you some piping tubing; can you identify those; this is Exhibit "H"?
A.1000. That is the fuel lines off the engine - identical with.

Q.1001. Major McPhail, from your examination of the damage done could you determine how the damage was caused to the belting?
A.1001. Yes, the belting was cut with a knife.

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Q.1002. Did you yourself make any search for any instrument of that type?
A.1002. I did, yes.

Q.1003. With what result?
A.1003. That I found a knife that I presumed had been the knife that cut the belting.

J.A. Don't tell us what you think; we can't put that in.

Q.1004. I am producing and showing to you this article; take it in your hands, please, Major McPhail, and identify it if you can.
A.1004. That is the knife that I found.

Q.1005. Can you tell the Court where you found that knife?
A.1005. I found it on a little path that leads from the back of the Kiltarlity Mill to what we call MacKenzies Pub - a little path that runs through the woods and it was alongside that path.

Q.1006. How many paths are there from Kiltarlity Mill to the MacKenzies Pub?
A.1006. There is a short way across from the mill to the pub through the field. It is quite open all the way across so that if anyone from the mill went across through the field this way, anyone is liable to see them. The other way, this path that I found this knife by, goes through the woods so that a person could get from Kiltarlity Mill to the pub without the ordinary person at the mill seeing them go at all.

Q.1007. In order to get on that path that goes through the woods to MacKenzies Pub from the Kiltarlity Mill, how would they proceed?
A.1007. They would have to go down through the Millyard and there round to the right of a little mill that is owned by the Estate. If the gates were closed it wouldn't be possible to go through the Estate's millyard and would have to go round to the round.

Q.1008. Where would that be in relation to the Scotch Mill?
A.1008. Going from the Kiltarlity main mill to the entrance of this little path they would have to go between the Scotch Mill and the Estate mill.

Q.1009. I am showing to you a rough sketch, Exhibit "E". I would like you to look at it and see if you can identify the various places shown on it.
A.1009. That is the main mill and the Scotch Mill and this - is that the Estate mill? That is the woods and the way across is from there, roughly, between the Scotch Mill and the Estate mill around this side.

Q.1010. Step up to the table here and show the Court on this sketch, roughly on this sketch, where you found this knife?
A.1010. It was off this road that runs along the edge of the woods and it was - I would say - 150 feet off this road, along the path not far from the corner of the Estate mill. Don't know much about this square, but in relation to the other buildings, would say roughly in there.

Q.1011. That is where you found the knife?
A.1011. Yes.

Q.1012. By following that path leading from there, where does it take you?
A.1012. It takes you to what we call MacKenzies Pub - MacKenzies Pub.

Q.1013. Show us where MacKenzies Pub is on this?
A.1013. Here.

Q.1014. So that by going that way he would be taking a roundabout route?
A.1014. Much longer than going across the field.

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Q.1015. When you found this knife, how was it; in what condition?
A.1015. It was closed and I didn't open the knife at all. I put it away very carefully thinking there might be finger-prints on it, and turned it over to Detective-Sergeant - the O.C. No. 5 District and without opening the knife at all.

Q.1016. The knife was closed when you found it?
A.1016. The knife was closed when I found it.

Q.1017. Do you know of your own knowledge who owns that knife?
A.1017. An engineer at the mill by the name of Brown reported that he lost a knife.

J.A. Was Owens there at the time that report was made; at the time this engineer made the report to you, was the accused person present at the time he said that?
Witness. That he lost the knife, no.
J.A. In that case you musn't tell the Court anything which is disclosed in a conversation outside of Owen's presence. That is heresay evidence; you musn't put it in.

EXHIBIT "L"

Q.1018. Major McPhail, the damage that was done at the Kiltarlity Mill premises, was it of such a nature that it affected production?
A.1018. If the damage hadn't been repaired it certainly would have affected production because it took about a dozen men about five hours to fix it.

Q.1019. A dozen men about five hours to fix it; if the damage had not been discovered on the night of the 14th would the mill have been able to operate on the morning of the 15th?
A.1019. No.

Witness cross-examined by the Defending Counsel.

Q.1020. Major McPhail, the knife which you see before you, is that a Government issue knife - an army knife?
A.1020. It isn't an issue by our Government; I would call that in my own mind a British clasp-knife; I believe it is an issue in some British units.

Q.1021. You think it is an issue somewhere?
A.1021. I can't say.

Def. Mr. President, it might save Major McPhail time if we could have him on character just now; if there is no objection to that.
J.A. It is quite permissible.

Q.1022. Major, do you mind telling the Court as to the character of the prisoner, Owens?
A.1022. I have known Owens for three years. He is one of the original members of the company, and I feel quite sure that his MFM 6 carries only only one offence that he committed while with the company. He was never a fellow who caused any trouble in any way, and he was a good worker, and in the three years I have known him I can only remember him getting into serious trouble once.

Q.1023. You would regard him as a good soldier?
A.1023. Yes, so far as the work is concerned he was an excellent worker and he was a fairly good soldier.

Q.1024. And I take it there is no reflection on his honesty?
A.1024. No, no reflection on his honesty whatsoever.

Prosecutor declines to re-examine this witness.

In the opinion of the Court and the Judge-Advocate is not necessary to comply with Rule of Procedure ...

The witness withdraws.

M.M.M.

Q.1015. When you found this knife, how was it; in what condition?
A.1015. It was closed and I didn't open the knife at all. I put it away very carefully thinking there might be finger-prints on it, and turned it over to Detective-Sergeant - the C.C. No. 5 District and without opening the knife at all.

Q.1016. The knife was closed when you found it?
A.1016. The knife was closed when I found it.

Q.1017. Do you know of your own knowledge who owns that knife?
A.1017. An engineer at the mill by the name of Brown reported that he lost a knife.

J.A. Was Owens there at the time that report was made; at the time this engineer made the report to you, was the accused person present at the time he said that?
Witness. That he lost the knife, no.
J.A. In that case you musn't tell the Court anything which is disclosed in a conversation outside of Owen's presence. That is heresay evidence; you musn't put it in.

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Q.1023. You would regard him as a good soldier?
A.1023. Yes, so far as the work is concerned he was an excellent worker and he was a fairly good soldier.

Q.1024. And I take it there is no reflection on his honesty?
A.1024. No, no reflection on his honesty whatsoever.

Prosecutor declines to re-examine this witness.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with Rule of Procedure 83(B).

The witness withdraws.

AT 1730 O'CLOCK THE COURT ADJOURNED UNTIL 0930 O'CLOCK ON THE 7th DAY OF DECEMBER, 1943.

ON THE 7th DAY OF DECEMBER, 1943, AT 0930 O'CLOCK, THE COURT RE-ASSEMBLED PURSUANT TO ADJOURNMENT, PRESENT THE SAME MEMBERS AS WHEN ADJOURNED.

12th Witness Prosecution — G-5267 Private James Cripps, No. 15 Coy Canadian Forestry Corps, being duly sworn, is examined by the Prosecutor:

Q.1025. Private Cripps, what is your regimental number, name, and full rank and unit?
A.1025. G-5267 Private James Cripps.

Q.1026. And your unit?
A.1026. No. 15 Coy Canadian Forestry Corps.

Q.1027. What are your duties in connection with No. 15 Coy C.F.C.?
A.1027. I work at the mill.

Q.1028. You work at the mill?
A.1028. Yes.

Q.1029. Do you recall being in MacKenzies Pub on the afternoon 14th September, 1943?
A.1029. Yes, Sir.

Q.1030. Who was present in the pub with you?
A.1030. Private Miles, Private Owens and Private Hayes.

Q.1031. Private Miles, Private Owens and Private Hayes?
A.1031. Yes.

Q.1032. What were you doing in the pub?
A.1032. Just drinking a few pints of beer.

Q.1033. What time was that?
A.1033. It was between two and three.

Q.1034. Between two and three; while you were in the pub did anyone have occasion to come to the pub for the purpose of telling you to get back to duties?
A.1034. Yes, that was after the pub closed.

Q.1035. What time did the pub close?
A.1035. Three o'clock.

Q.1036. How long after the pub closed?
A.1036. I couldn't exactly say for sure.

Q.1037. Where were you after the pub closed?
A.1037. Outside the pub.

Q.1038. Who came?
A.1038. Sergeant Jewel.

Q.1039. And what conversation took place?
A.1039. He just came and told us that the mill was going; nobody spoke.

Q.1040. Did you go back to the mill?
A.1040. No, Sir.

Q.1041. Were any other efforts made to have you go back to the mill that afternoon?
A.1041. Yes, Sir, Sergeant Parker came over later.

Q.1042. What time would that be?
A.1042. Well, it wasn't long after Sergeant Jewel; I couldn't exactly say what time.

Q.1043. Between what times?
A.1043. Between three and four.

Q.1044. Between three and four; and what conversation took place on this occasion?
A.1044. He told us that Sergeant Jewel sent him over.

Q.1045. Any other conversations take place?
A.1045. No, Sir.

Q.1046. Did you go back to work?
A.1046. No.

Q.1047. Did any of the others go back to work?
A.1047. No, Sir.

Q.1048. Did any of the others give any reasons why they wouldn't go back to work?
A.1048. No, Sir.

Q.1049. Were there any argument took place?
A.1049. No, Sir.

Q.1050. Between Sergeant Parker and the accused Private Owens?
A.1050. No, Sir, not at that time.

Q.1051. Was there any other time when an argument did take place?
A.1051. Sergeant Parker came over the second time and told us Sergeant Jewel sent him over, and we told him we were going over later.

Q.1052. Did any argument take place between Private Owens and Sergeant Parker?
A.1052. It didn't appear to be an argument, just a little discussion.

Q.1053. What was the discussion?
A.1053. About working out in the yard, about not having a square deal.

Q.1054. Who said that?
A.1054. Couldn't say.

Q.1055. Was Private Owens present?
A.1055. Private Owens was there at the time.

Q.1056. What was the argument about?
A.1056. Just - he was explaining about not getting a square deal, out in the yard.

Q.1057. You heard either one or the other of them?
A.1057. I couldn't exactly say which one.

Q.1058. You heard either one or the other?
A.1058. Yes.

Q.1059. How long did that argument last?
A.1059. Just a short time.

Q.1060. What was Sergeant Parker's reply?
A.1060. He told them he would see Lieut. Murphy.

Q.1061. And at the conclusion of the argument did you all go back to work?
A.1061. No, Sir.

Q.1062. What did you do after that?
A.1062. We went into the pub.

Q.1063. Who went back into the pub?
A.1063. Me and Miles, Hayes, and Owens.

Q.1064. The four of you?
A.1064. Yes.

Q.1065. How long did you stay in the pub?
A.1065. I stayed in the pub till the Sergeant came down after us.

Q.1066. What Sergeant.
A.1066. Sergeant Dogan.

Q.1067. And anybody else stay with you?
A.1067. Private Miles.

Q.1068. Where did Private Owens and Private Hayes go?
A.1068. I couldn't say; went outside a few minutes before.

Q.1069. Do you know what time that would be?
A.1069. No idea.

Q.1070. Do you know in what condition Private Owens was?
A.1070. He appeared to be sober last time I seen him.

Q.1071. He appeared to be sober last time you saw him?
A.1071. Yes.

Witness cross-examined by Defending Counsel.

Q.1072. You all had a few drinks, hadn't you?
A.1072. Yes, Sir.

Q.1073. Would you say that you/were still cold sober at six o'clock that night?
A.1073. Yes, Sir.

Q.1074. Well, now this argument you spoke about with Sergeant Parker; were you all taking part?
A.1074. We didn't go out in the yard - me and Miles.

Q.1075. Was it a quite good humoured argument?
A.1075. Yes, Sir, more a discussion.

Q.1076. More a discussion; they wanted something extra at the mill, I think?
A.1076. Yes, Sir.

Prosecutor declines to re-examine this witness.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with Rule of Procedure 83(B).

The witness withdraws.

13th Witness Prosecution. K-72778 Private Stewart Tellson Brown, No. 18 Coy Canadian Forestry Corps, being duly sworn, is examined by the Prosecutor:

Q.1077. What is your regimental number, full name, rank and unit?
A.1077. K-72778 Private Stewart Tellson Brown.

Q.1078. And your unit?
A.1078. 18 Forestry Coy.

Q.1079. 18 Coy Canadian Forestry Corps?
A.1079. Yes.

Q.1080. What are your duties in No. 18 Coy.
A.1080. I run the engines in the mill, Sir.

Q.1081. And what type of engines are in the mill?
A.1081. Diesel.

Q.1082. How many?
A.1082. Three.

Q.1083. Do you recall on the afternoon of the 14th September any of these engines requiring any repair work?
A.1083. Yes.

Q.1084. Will you just state what was done?
A.1084. There was one engine that needed some repair work done on it.

Q.1085. What time was this?
A.1085. I think it was oh round about half-past one or two. It was shut down for a while and we didn't start till a quarter to two.

Q.1086. Then the repair work was done?
A.1086. Yes, until quitting time.

Q.1087. What time is quitting time?
A.1087. I think it was around 5:30 or 6:00; I am not sure just when.

Q.1088. And what condition were the engines in at quitting time?
A.1088. They were running.

Q.1089. They were running?
A.1089. Yes.

Q.1090. Had any arrangements been made for these engines to be worked on at the end of quitting time?
A.1090. Yes.

Q.1091. What arrangements were these?
A.1091. The two mechanics were to come down from District to work on the Internationals and the Ruston Hornsby was left running for the mechanics because it has the lights connected to it.

Q.1092. And did these mechanics come down?
A.1092. Yes.

Q.1093. Did they come down before you left?
A.1093. Yes, just when I was leaving they come.

Q.1094. But at the time that you did leave you said that all the engines were in running order?
A.1094. Yes.

Q.1095. Now were you back at the mill again that day?
A.1095. I was when I was called, Sir, in the evening.

Q.1096. What time would that be?
A.1096. Somewheres around eight o'clock, quarter to eight, something like that.

Q.1097. When you got down to the mill after being called, what did you find?
A.1097. That the engines had been tampered with.

Q.1098. Anything else?
A.1098. Some damage done such as cutting wires, some of the fuel lines was broken, one or two parts was taken off the Ruston Hornsby.

Pres. Speak up.
A.1098. They were thrown away - couldn't find them right then.

Q.1099. Any other damage done around the mill?
A.1099. The belts was cut - some of the belts.

Q.1100. Did you look around for any of the parts that were missing?
A.1100. We did, but being dark I don't think we found any.

Q.1101. You mean found any that night?
A.1101. Yes.

Q.1102. Any search made the next day?
A.1102. Yes.

Q.1103. And with what result?
A.1103. Found one or two things that were missing.

Q.1104. I am showing you Exhibit "H". Will you look at it, please, and see if you can identify them?
A.1104. It is like the fuel lines that was on them, Sir, I couldn't say that it was.

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Q.1105. Like the fuel lines that was on what?
A.1105. On the International.

Q.1106. International what?
A.1106. Diesel Motors.

Q.1107. That are used in the Kiltarlity Mill?
A.1107. Yes.

Q.1108. And I ask you to look at Exhibit "G"; see if you can identify any of the articles?
A.1108. Yes, that is from one of the engines.

Q.1109. What are those you are holding in your hand?
A.1109. That is the wire - spark wire.

Q.1110. Part of the ignition system?
A.1110. Yes.

Q.1111. Now, Private Brown, is there any of your own personal equipment missing?
A.1111. Well, there is a jacknife that I kept in my drawer; it was missing.

Q.1112. When did you use that jacknife last?
A.1112. Round about four o'clock.

Q.1113. Four o'clock?
A.1113. Between four and five.

Q.1114. And after using it where did you put it?
A.1114. Put it in the drawer on my bench.

Q.1115. And when you left the mill at 5:30; where would that jacknife be?
A.1115. Generally always kept it in the drawer, Sir, put it in the drawer between four and five.

Q.1116. It normally would stay there?
A.1116. Yes.

Q.1117. How many people knew that that jacknife was in the drawer?
A.1117. Most of the boys, the millwrights, some of the boys upstairs that worked in the mill knew I kept it there.

Q.1118. What did you use that jacknife for?
A.1118. For different little jobs. If I needed to make a plug or anything, kept it there for that purpose, any work I needed to do with the knife.

Q.1119. What condition was the knife in?
A.1119. Quite sharp.

Q.1120. I am producing and showing to you Exhibit "L"; will you please take it, examine it, and identify it if you can?
A.1120. I had a mark on my blade here that I made with a file; there is no mark there on this; and I also had the punch sharpened and the screw-driver part sharpened - filed.

Q.1121. Is the punch sharpened on this knife?
A.1121. Yes, it has been filed.

Q.1122. And is the screw-driver sharpened on this knife?
A.1122. Yes, it has been filed.

Q.1123. When did you make the mark on the blade?
A.1123. When I first got the knife.

Q.1124. Has the blade been sharpened since then?
A.1124. Yes, quite often.

JJH

Q.1125. Do you identify this
A.1125. I don't like to say t... as your own? ...r, its really mine. The punch is sharpened, the screw is filed.

Q.1126. Do you think it's your own?
A.1126. No, I wouldn't really say, p...ely.

Q.1127. Do you think it is?
A.1127. Wouldn't like to say that, Sir, f... mark isn't on there, I put on there, a simple reason that

Q.1128. Where exactly did you put this mark on?
A.1128. Right on the side of the blade here, a fi...ark.

Q.1129. And you put that mark on after you got the k...?
A.1129. New, yes.

Q.1130. And when did you first get the knife?
A.1130. Oh about a year and a half or two years ago.

Q.1131. How big was the file mark on the blade?
A.1131. It was just - wouldn't say very big - merely a scratch.

Q.1132. And how many times has the knife been sharpened since then?
A.1132. Once a month, I would say.

Q.1133. Now, I would like you to answer my question. Do you think that knife is your own?
A.1133. Well, if I was going by the marks, as I said was there, I would say it was my knife, but being that mark is gone I can't really say that it is.

Q.1134. I am not asking you to say that it is definitely; I am asking whether you think that it is yours?
A.1134. Yes, I really think that is my knife.

Q.1135. Did you find the knife?
A.1135. No, Sir.

Q.1136. Were you present when the knife was found?
A.1136. Yes, they took me down after the knife was found to the place where it was found.

Q.1137. Were you present at the time that was found?
A.1137. No, Sir.

Q.1138. Well, what happened after it was found?
A.1138. The officer that found it, the Major of 15 Coy, took us down to where he had seen the knife, I mean where he found the knife leaning against the tree, and showed us the knife that was lying against the tree, and he asked me if it was my knife.
J.A. Never mind what he asked you; was Owens present at that time?
Witness. No, Sir.
J.A. You musn't say what the officer asked.

Q.1139. But you went down and saw the knife where it was found?
A.1139. Yes.

Witness cross-examined by Defending Counsel.

Q.1140. You tell us your engines were running at quitting time?
A.1140. Yes.

Q.1141. What time would that be that same day?
A.1141. Around either 5:30 or 6:00 o'clock; I wouldn't say for sure what time.

Q.1142. About 5:30 or 6:00 o'clock; that was when the repair people came?
A.1142. Yes.

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Q.1125. Do you identify this knife as your own?
A.1125. I don't like to say that, Sir, its really mine. The punch is sharpened, the screw-driver is filed.

Q.1126. Do you think it's your own?
A.1126. No, I wouldn't really say, positively.

Q.1127. Do you think it is?
A.1127. Wouldn't like to say that, Sir, for the simple reason that mark isn't on there, I put on there.

Q.1128. Where exactly did you put this mark on?
A.1128. Right on the side of the blade here, a file mark.

Q.1129. And you put that mark on after you got the knife?
A.1129. New, yes.

Q.1130. And when did you first get the knife?
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J.A. Never mind what he asked you; was Owens present at that time?
Witness. No, Sir.
J.A. You musn't say what the officer asked.

Q.1139. But you went down and saw the knife where it was found?
A.1139. Yes.

Witness cross-examined by Defending Counsel.

Q.1140. You tell us your engines were running at quitting time?
A.1140. Yes.

Q.1141. What time would that be that same day?
A.1141. Around either 5:30 or 6:00 o'clock; I wouldn't say for sure what time.

Q.1142. About 5:30 or 6:00 o'clock; that was when the repair people came?
A.1142. Yes.

Q.1143. You're talking about engines situated in the lower story of the mill?
A.1143. Yes.

Q.1144. And up above these engines is the top story of the mill in which is the sawmill?
A.1144. Yes.

Q.1145. Has Owens ever worked actually in the mill, in the engine house?
A.1145. No, he hasn't worked in the engine house.

Q.1146. Has he worked upstairs, do you know?
A.1146. Yes.

Q.1147. Never worked about the engine house?
A.1147. No.

Q.1148. He never assisted you?
A.1148. No.

Q.1149. You always kept this knife in a drawer?
A.1149. Yes.

Q.1150. You used it just for working about the engine house. Is it not the case that you marked the dagger part also?
A.1150. No.

Q.1151. You just had one mark, had you, on it?
A.1151. Yes.

Q.1152. On the blade?
A.1152. On the blade.

Q.1153. Was that a mark which went right across the blade to the blunt side of it then?
A.1153. No.

Q.1154. Where was it then?
A.1154. On the edge part, Sir.

Q.1155. How far up did it extend?
A.1155. Oh about one-half inch up the blade.

Q.1156. About one-half inch up the blade, and that was a mark which was put on with a -
A.1156. file.

Q.1157. It would be true, wouldn't it, to say, Brown, that you can find no trace whatever of that mark on the blade?
A.1157. No.

Q.1158. Had you been able to find that mark on the blade, you would have been satisfied possibly that that was your knife?
A.1158. Yes.

Q.1159. But at the present moment you are not really able, on your oath, to identify it. You may think it's your knife but you are not able positively to identify it?
A.1159. Not absolutely.

Witness questioned by the President.

Q.1160. Private Brown, how was this knife sharpened when you had it sharpened; sharpened by a file or grindstone or what?
A.1160. Grindstone, Sir.

Q.1161. Wouldn't that in being sharpened fifteen or eighteen times completely take off that mark?
A.1161. Yes, I think it would.

Q.1162. Had you noticed this mark quite recently at all?
A.1162. No.

Q.1163. I would like to ask you one other question; what time did you leave the mill after closing time; did you go up with the truck that left with all the other men?
A.1163. Yes.

Q.1164. That would be what - shortly after the mill closed?
A.1164. Yes, shortly afterwards.

Witness questioned by the Judge-Advocate.

Q.1165. Who were the men that came to repair the engines?
A.1165. They were two mechanics from District, Jack Jones - I don't remember the Corporal's name, Sir.

Q.1166. What work did they have to do on the engines?
A.1166. I just can't remember now just what the work was at the time.

Q.1167. How long a job was it?
A.1167. I couldn't say - oh half an hour.

Q.1168. Half an hour for two men?
A.1168. Yes.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with Rule of Procedure 83(B).

The witness withdraws.

14th Witness Prosecution

K-98516 Corporal Vincent Joseph Bowker, General Workshops, Canadian Forestry Corps, being duly sworn, is examined by the Prosecutor:

Q.1169. What is your regimental number, name, rank and unit?
A.1169. My regimental number K-98516 - Vincent Joseph Bowker.

Q.1170. And your unit?
A.1170. General Workshops.

Q.1171. Of what formation?
A.1171. Attached No. 18 Coy.

Q.1172. What formation?
A.1172. No. 5 District.

Q.1173. Of what?
A.1173. Of the Canadian Forestry Corps.

Q.1174. Do you recall on the afternoon of 14th September be called to a job in the Canadian Forestry Corps Mill at Kiltarlity?
A.1174. Yes, I do.

Q.1175. Will you please give the court the circumstances under which the work was performed?
A.1175. We were called - we were sent down to the mill at 18 Coy.

Q.1176. When you say "we" who do you mean?
A.1176. Private Jones and myself. We were to carry out some repairs on one of the U.D.18's.

Q.1177. When you say U.D.18, what do you mean?
A.1177. U.D.18 Power Plant.

Q.1178. Driven by what fuel?
A.1178. Diesel oil.

Q.1179. What time did you arrive there?
A.1179. I would say approximately quarter after five.

Q.1180. Quarter after five, yes, and who was on the mill site at the time that you arrived?
A.1180. The whole crew were there as far as I know, in the engine room, and Private Brown was there.

Q.1181. Then what did you do?
A.1181. We waited until the mill shut down and then we proceeded to carry out the work we had been sent down to do.

12/4/42

Q.1182. After the mill shut down; what time did the mill shut down?
A.1182. I believe about five at that time.

Q.1183. Do you know that was the time?
A.1183. I don't know especially; shortly after we got there.

Q.1184. You do know you arrived at 5:15.
A.1184. Yes, approximately.

Q.1185. You say the mill shut down shortly after you got there; then what did the crew do?
A.1185. The crew went home for supper.

Q.1186. That left who at the mill site?
A.1186. Private Jones and myself, and while we were carrying out repairs I happened to glance over to the Scotch Mill and see the watchman or somebody over there.

Q.1187. That would be how many on the mill site?
A.1187. As far as I know, three.

Q.1188. At approximately 5:30?
A.1188. After the millcrew had left.

Q.1189. How long did you work at the mill site on the engines there?
A.1189. Around an hour.

Q.1190. What time did you finish the job?
A.1190. Well, I figure we left at 6:30.

Q.1191. About 6:30; now in that period of from the time that the crew left to 6:30, did you see anybody else on the mill site?
A.1191. None outside the man over at the Scotch Mill.

Q.1192. Nobody else?
A.1192. Not except the man outside the Scotch Mill.

Q.1193. When you left at approximately 6:30 what condition were the motors in?
A.1193. When we left we shut the Ruston down; it was running to keep the lights going. The other engine that we were working on left it in a temporary state; figured on coming back in the morning.

Q.1194. In working order?
A.1194. Running order temporarily.

Q.1195. How about the third motor?
A.1195. Absolutely O.K.

Q.1196. It was in running order. So that when you left at approximately 6:30 you are prepared to say the three motors were in running order so that the mill could operate?
A.1196. The mill could operate.

Q.1197. Did you see anybody when leaving the millyard?
A.1197. Yes, when we got in our Bedfry pulling around the mill, we saw a woman going throughthe yard.

Q.1198. Do you know who that woman was?
A.1198. Private Jones identified her as --
J.A. Never mind that.
A.1198. I don't know her at all myself.

Q.1199. Do you know now who she was?
A.1199. Yes, I do.

Q.1200. Who?
A.1200. Miss MacKenzie of the hotel.

Q.1201. And what timewdid you say that was?
A.1201. 6:30.

Q.1202. Therefore when you pulled out of the millyard with Private Jones, to the best of your knowledge there was only two people left on the mill site?
A.1202. Yes, Sir, to my knowledge.

Q.1203. And that would be who?
A.1203. Miss MacKenzie and the man that was at the Scotch Mill.

Witness cross-examined by the Defending Counsel.

Q.1204. I take it,Corporal, you weren't paying any particular attention to who might be about the mill when you were there to carry out your job?
A.1204. That is right.

Q.1205. So that there may have been other people about?
A.1205. So far as I know that is all the people.

Q.1206. You don't garantee there weren't other people about?
A.1206. Absolutely not.

Q.1207. By any chance, did you see the watchman before you left, about 6:30?
A.1207. That I couldn't definitely state.

Witness cross-examined by the President.

Q.1208. Corporal, did you have any occasion during the time that you were either repairing the engine or afterwards before you left, to walk to any other portion of the mill - or in other words, did you notice any damage to belts or anything like that before you left?
A.1208. During the course of repairing I had to walk across the entire width of the mill to use the vice at the other side of the mill.

Q.1209. You mean almost opposite the engine room?
A.1209. Yes, in order to get in had to kitty-corner across the mill.

Q.1210. You noticed no damage to belting, or anybody else there at that time?
A.1210. No, no damage as far as I could see, casually walking through.

Q.1211. What time would that be?
A.1211. I would say about ten or fifteen minutes before we left.

Witness questioned by the Court.

Q.1212. There one point, Corporal, you kept the Ruston running so that you would have lights?
A.1212. Right, Sir.

Q.1213. When you shut that off was there clear vision in underneath the mill?
A.1213. In some parts, yes.

Q.1214. Where the belting would be?
A.1214. Some belting would be exposed to light and other parts would not. If you were close to an opening you would have plenty of light alright. The only reason we left the plant running was that the engine was set back in a recess.

Q.1215. You wanted the lights to use an extension?
A.1215. That is right, Sir.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with Rule of Procedure 83(B).

The witness withdraws.

MMH

15th witness Prosecution — K-72694 Private John Alfred Jones, General Workshop, Canadian Forestry Corps, being duly sworn, is examined by the Prosecutor:

Q.1216. Private Jones, will you give your regimental number, full name, rank and unit?
A.1216. K-72694 Private Jones, J.A.

Q.1217. What does J.A. stand for?
A.1217. John Alfred.

Q.1218. Unit?
A.1218. General Workshop, No. 5 District.

Q.1219. Of what formation - Canadian Forestry Corps?
A.1219. Yes, Canadian Forestry Corps.

Q.1220. Private Jones, do you recall being on the premises of the Kiltarlity Mill, Canadian Forestry Corps Mill with Corporal Bowker on the 14th September?
A.1220. Right, Sir.

Q.1221. What time dod you arrive there?
A.1221. A little before 5:30.

Q.1222. Little before 5:30, yes, and what did you go there for?
A.1222. To repair one of the U.D.18's.

Q.1223. U.D.18's what?
A.1223. A Diesel motor.

Q.1224. And when you arrived on the premises who was there?
A.1224. The mill crew was still there.

Q.1225. The mill crew was still about, yes, and when did you go to work on the motor?
A.1225. We started as soon as we got there, getting things ready for it.

Q.1226. When did you actually start work on the motor?
A.1226. When they shut the mill d own.

Q.1227. What time?
A.1227. About 5:30 - quitting time.

Q.1228. Then after the mill shut down what happened to the crew?
A.1228. They went back to their units.

Q.1229. And after the crew went back to their units who was left on the premises?
A.1229. Just Corporal Bowker and myself, and a fellow on the Scotch Mill.

Q.1230. Did you see him?
A.1230. Seen him from the door; didn't go over.

Q.1231. See anybody else at all around the property at 5:30, after the crew left?
A.1231. Not at 5:30.

Q.1232. How long did it take you to complete the job you had been sent there to do?
A.1232. It was around 6:30, I believe, when we left.

Q.1233. And between the time that the crew left and the time that you completed the job, did you see anybody else on the mill site?
A.1233. Just the Miss MacKenzie, the pub girl.

Q.1234. Where did you see her?
A.1234. At the back end of the mill in the bottom corner.

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Q.1235. In the mill?
A.1235. No, just walking by.

Q.1236. Did you speak to her?
A.1236. Just said, "Hello" to her, as she went by.

Q.1237. You were in the car, were you?
A.1237. Right, Sir.

Q.1238. So that to the best of your knowledge when you and Corporal Bowker left who all were on the mill site at Kiltarlity Mill?
A.1238. Just the lad on the Scotch Mill was all we noticed -

Q.1239. And -
A.1239. And this here barmaid.

Q.1240. And Miss MacKenzie?
A.1240. Yes.

Q.1241. Now where are these motors you were working on located in the mill?
A.1241. They are on the lower side of the mill.

Q.1242. How do you mean - lower side?
A.1242. Looking at it from the pond on the left-hand side.

Q.1243. First of all, how many stories in the mill?
A.1243. Two.

Q.1244. Which story is it?
A.1244. In the bottom floor.

Q.1245. What lighting would you have while working on the mill?
A.1245. The Ruston Motor.

Q.1246. Was that - what type of light did that give?
A.1246. Electric lighting.

Q.1247. And with the Ruston Motor running would that light up the whole mill or just the part you were working in?
A.1247. I believe it lit up the whole bottom - don't know about the top.

Q.1248. Was the whole bottom lit up?
A.1248. I know it was lit up where we were working; I believe it all was.

Q.1249. Are you sure?
A.1249. I wouldn't swear to it.

Q.1250. But you believe it was all lit up?
A.1250. Yes.

Q.1251. In the various places you were working, could you see around the bottom of the mill?
A.1251. No, you can't see, well it is practically all boarded off where the motor was.

Q.1252. Is that the only place you were?
A.1252. That is the only place;we went over to the file.

Q.1253. Where was that?
A.1253. On the mill site.

Q.1254. On the opposite side?
A.1254. On the opposite side.

Q.1255. To do that you had to cross where?
A.1255. On the pond side of the motors.

Q.1256. What I mean is that did you have to cross from one side of the building to the other side of the building?
A.1256. Right.

Q.1257. Underneath - did you see any person at all underneath the mill?
A.1257. Not a soul.

Q.1258. Just Corporal Bowker and yourself?
A.1258. Yes.

Q.1259. Do you remember what time it was that you crossed underneath the mill?
A.1259. No, I imagine around six o'clock, close to six.

Q.1260. And it was 6:30 when you and Corporal Bowker left?
A.1260. Right, Sir.

Q.1261. And to the best of your knowledge, when you and Corporal Bowker left only two people were on the mill site - the watchman and Miss MacKenzie?
A.1261. Right, Sir.

Witness cross-examined by Defending Counsel.

Q.1262. There may have been other people on the mill site or adjacent to the mill site?
A.1262. Pardon, Sir?

Q.1263. There may have been other people on the mill site or near the mill site when you left?
A.1263. There could have been but we never noticed.

Prosecutor declines to re-examine this witness.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with Rule of Procedure 83(B).

The witness withdraws.

16th Witness Prosecution

G-48187 Staff-Sergeant William Henry Savoie, General Workshops, Canadian Forestry Corps, being duly sworn, is examined by the Prosecutor:

Q.1264. Will you give your regimental number, full name, rank and unit?
A.1264. G-48187 Staff-Sergeant W.H. Savoie.

Q.1265. What does W.H. stand for?
A.1265. William Henry.

Q.1266. What is your unit?
A.1266. General Workshops No. 5 District.

Q.1267. What formation?
A.1267. Canadian Forestry Corps.

Q.1268. And what are your duties?
A.1268. Duties - mechanical repair, distribution of motor transport, and such; covers the entire movement and repair of motor transport.

Q.1269. In where?
A.1269. In No. 5 District.

Q.1270. 5 District Canadian Forestry Corps. Now, do you recall the afternoon or evening of the 14th September being called to the Kilterlity Mill?
A.1270. Yes, Sir.

Q.1271. Will you state the circumstances please?
A.1271. At about 7:30 on that particular evening I was told --

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Q.1272. Don't tell us what you were told; as a result of what you were told what did you do?
A.1272. I organized a repair crew and sent them to Kiltarlity Mill with Lieut. Peake.

Q.1273. Yes, and when you got to Kiltarlity Mill, what did you find?
A.1273. I found on passing through the mill to get to the engines a number of belts which I could see had been cut and three engines under the mill damaged to such an extent that they would require repair before they would run.

Q.1274. Can you detail the damage done to the engines?
A.1274. Well, Ruston Hornsby cylinder head release cock removed; priming handle removed from shaft; oil lubricator adjuster removed; air pressure guage damaged; that covers one engine. The engine nearest the Ruston Hornsby which is an International U.D.18 Power Unit had six ignition wires cut or pulled, removed; petrol line broken in two places; the wire from voltage regulator to instrument panel pulled out; voltage regulator removed from bracket; fuel disc for fuel oil lines removed; changeover yoke pulled out of place; changeover yoke spring removed; The other U.D.18 or International U.D.18 Power Unit had six ignition wires removed; petrol line broken; fuel lines broken and removed; the oil filter cap removed; and also the wires from voltage regulator to instrument panel removed. I believe that is all I can remember, Sir.

Q.1275. That is all you can remember at the present time; yes; was there any other damage that you know of done around the mill that you observed at that time?
A.1275. The damage I spoke of before I observed on walking through the mill to the engines. I observed a number of belts lying off the pulleys - apparently cut.

Q.1276. Did you actually observe they were cut?
A.1276. No, Sir, not actually that they were cut.

Q.1277. The belting doesn't come within your job?
A.1277. No, Sir.

Q.1278. The damage that you observed on the engines; is that damage that could result from normal wear and tear?
A.1278. No, Sir.

Q.1279. How could it have happened?
A.1279. Well, it must have been damage caused through someone pulling these things or tearing them off or in some ways removing them with a wrench.

Witness cross-examined by the Defending Counsel.

Q.1280. You have given us a very comprehensive idea of what damage was done to the engines and motors; and you have told us that some parts were actually removed and were these screw-on parts or parts screwed and attached by screws?
A.1280. Some, Sir, were screwed on others --

Q.1281. Take the starting handle for instance, was the handle removed?
A.1281. No, this was broken off at the shaft where screwed into the shaft.

Q.1282. You would need a hammer to do that?
A.1282. Not necessarily, Sir, a slight pull, not a hard pull would break it off - a piece of metal perhaps 7/10 inch in diameter.

Q.1283. Certain of the other things would have to be taken off with a wrench?
A.1283. Yes, Sir.

Q.1284. Or a screw-driver?

A.1284. One in particular, Sir, would have to be taken off with a wrench - the cylinder relief valve cock.

Q.1285. With regard to the petrol feeds broken; would you say these had been broken with nippers?
A.1285. No, Sir, they had been pulled, stretched and torn off.

Q.1286. Very considerable force would be required to do that?
A.1286. Yes, Sir.

Q.1287. Copper-plated were they?
A.1287. Yes, Sir.

Q.1288. Would you suggest that quite a while would be needed to do this damage; for instance one man would take quite a while to go through these engines and damage them as done?
A.1288. If they were done hurriedly, I would say five minutes.

Q.1289. A certain amount of noise would be involved, wouldn't there?
A.1289. Yes, Sir.

Q.1290. You say that you got your instructions to go with this party about 7:30?
A.1290. Somewhere about that time, Sir.

Q.1291. What time did you have these machines all running again?
A.1291. 11:30 I believe, Sir.

Q.1292. Same night?
A.1292. Same night.

Q.1293. None of the damage was irreparable damage; there was no damage done to the actual working parts of the motors?
A.1293. No, Sir, all surface parts.

Prosecutor declines to re-examine this witness.

In the opinion of the Court and the Judge-Advocate, it is not necessary to comply with Rule of Procedure 83(B).

The witness withdraws.

17th Witness Prosecution — Detective Sergeant Gregor Calder Urquhart, Inverness-shire, Constabulary, being duly sworn, is examined by the Prosecutor:

Q.1294. Will you give your full name, residence, and occupation?
A.1294. Gregor Calder Urquhart.

Q.1295. And your residence and occupation?
A.1295. I am stationed at Kiltarlity Constabulary, and I am a Detective Sergeant.

Q.1296. Do you know the accused Private Owens?
A.1296. Yes, I do.

Q.1297. I believe, Sergeant Urquhart, that you had occasion to give the usual warning to Private Owens?
A.1297. Yes, Sir.

Q.1298. Subsequent to his arrest?
A.1298. Yes, I did.

Q.1299. Will you tell the Court the exact warning you gave Private Owens?
A.1299. I told him that he was charged with maliciously cutting the belts and damaging the three engines in the Canadian sawmill at Kiltarlity the 14th September, and that he was being charged with contravention of the Defence General Regulations 1939, Regulation 2 B (1), and I warned him that he wasn't obliged to say anything in answer to the charge unless he cared to, but whatever he did say might be used in evidence.
Q.1300. After giving him that warning did he make any statement at all?

A.1300. Yes, Sir.

Q.1301. What did he say?
A.1301. He said that "I never had nothing to do with the wrecking of that mill."

Q.1302. Did he make any further statement?
A.1302. That was the only statement he made in reply to the charge.

Q.1303. Did he discuss with you at all about any injury --

Def. I am going to object here to the nature of the question. I would like to know first whether there was a question adressed by this Detective Sergeant about the injury to the accused, after he had been charged. My point is that once the charge is made the accused has an opportunity to make a statement if he wishes to do so; in this case he did so. After that statement has been made, the police are not entitled to put questions to a person charged.

J.A. To find that out you may examine him on these points, if you wish.(To Prosecutor)

Q.1304. Did you put a question?
A.1304. Not after the charge; I did before charging him.

Def. Then I object again.

Q.1305. We don't want anything that you asked before charges. After you charged him did you put any questions to him?
A.1305. Not after I charged him.

Q.1306. The only statement that he made to you after charg was that he had nothing to do with the wrecking of that mill?
A.1306. Nothing to do with the wrecking of that mill.

Witness cross-examined by the Defending Counsel.

Q.1307. You are a Detective Inspector?
A.1307. Detective Sergeant.

Q.1308. You might give me some help. When you were engaged on this matter when you charged Owens the accused here you charged him for a commission of a civil offence?
A.1308. Yes, Sir.

Q.1309. You were investigating the matter for the Crown and you completed your enquiries for the Crown and handed in a report to the Procurator Fiscal; do you know if he took proceedings?
A.1309. He didn't take proceedings, no.

Prosecutor declines to re-examine this witness.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with Rule of Procedure 83(B).

The witness withdraws.

Pros. Mr. President, that concludes the number of witnesses that are to be called for the Prosecution, but at this time and before carrying on with the further proceedings or before the Defence is called upon, I would like to move that the Court adjourn to the site of the alleged crime, that is to the Kiltarlity Mill so that the evidence given by the witness or the various witnesses will be clearly understood by the Court in relation to the actual place at which the events took place.

J.A. I think we should have a view of the site of the damage if we can move there. I would say the Court, the Prosecutor and Defending Counsel and Officer, the accused, and the stenographer - at least that many should be there. The officers under instruction can if transportation can be provided for them.

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A.1300. Yes, Sir.

Q.1301. What did he say?
A.1301. He said that "I never had nothing to do with the wrecking of that mill."

Q.1302. Did he make any further statement?
A.1302. That was the only statement he made in reply to the charge.

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Witness cross-examined by the Defending Counsel.

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A.1307. Detective Sergeant.

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A.1308. Yes, Sir.

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A.1309. He didn't take proceedings, no.

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Pres. The Court will now proceed to Kiltarlity Mill to view the place where the damage occurred. The Court will re-assemble in this room at 1415 hours today after the said view.

At 1055 hours the President, Members of the Court, the Judge-Advocate, the Prosecuting Officer, the Defending Counsel and Defending Officer, the accused and escort, and shorthand writer attended at Kiltarlity Mill and viewed the place.

AT 1145 O'CLOCK THE COURT ADJOURNED UNTIL 1415 O'CLOCK ON THE 7th DAY OF DECEMBER, 1943.

ON THE 7th DAY OF DECEMBER, 1943, AT 1415 O'CLOCK, THE COURT RE-ASSEMBLED PURSUANT TO ADJOURNMENT, PRESENT THE SAME MEMBERS AS WHEN ADJOURNED.

J.A. The Prosecution has closed its case, and the Court has had a view of the scene of the particular destruction to the mill. At this point I am asking the Defence if they have any motions before I ask questions of the accused.

Def. The Defence would submit at this stage that no case has been made out against the accused connecting him with this crime. I move the Court to dismess the charge.

J.A. Do you wish to elaborate on that?

Def. I think it might be advisable. I don't wish to detain the Court one minute longer than necessary, but it must be realized that the charge against the accused is quite a serious charge regarded by the Army authorities as a serious charge, otherwise we wouldn't be here.

The first point I am making is there is no direct evidence whatsoever, against the accused or anybody else. Nobody saw this damage being done. We have an approximate time during which it was being done, but there is no direct evidence whatsoever to connect the accused with the offence. Now, I don't know what attitude the Prosecutor will take, but it seems to me the only one he can take up is that there is what we call in Scotland facts and circumstances, what you may call circumstantial evidence, which he may wish to air before this Court. Well now, I am quite prepared to meet him on the question of circumstantial evidence.

Where you have no direct evidence to a crime in this Country it may be possible to prove a crime against an accused person by facts and circumstances, but the position is here that we jealously regard the rights of a citizen, and that the law views cases of facts and circumstances, indeed cases of any kind in Criminal courts, that it is better not to prove guilty a guilty person rather than one innocent person suffer; and it is a rule of law that any accused person must be proved guilty beyond all reasonable doubt. There must be no doubt; no room for doubt; and that has been elaborated in English courts to the extent that the proceedings must have ruled out the possibility of any other person having committed the offence. Or where an explanation is made by the accused which is not accepted by the Jury, even;if that explanation is a plausible explanation then the accused must be acquitted because the Prosecution has not then proved his case beyond all possible doubt.

For authority I quote the cases Rex vs Schama and Rex vs Abramovitch (1914) (31 T.L.R.) a Court of Appeal case presided over by Lord Justice Reading, probably known to Members of the Court, when he was a barrister he was Mr. Rufus Isaacs. Rex vs Schama and Rex vs Abramovitch - these gentlemen were convicted and in an appeal to the Court of Criminal Appeal these convictions were quashed on the score that though the Jury may not have believed an explanation given, yet there

was the possibility that the Crown had not proved its case beyond that reasonable doubt, which is necessary in criminal cases.

Now in a case of facts and circumstances, the conviction by facts and circumstances is regarded as somewhat dangerous and the law is reduced to this, that where there is a case set up on facts and circumstances each particular link in the chain must be separately examined and separately tested; and if one of these links breaks down the whole case is wiped out.

It is my submission here that in this case if this man Owens had not received a cut on the thigh, I can't see how any case of any kind could have been made up against him; and it seems to me that that is the one fact upon which the Prosecution here can urge that there is a possibility - no more than a possibility - a possibility that this man Owens, the prisoner, may have been involved in the damage in the mill.

That particular link and it is a vital link breaks down completely. We know that the wound was a deep wound. We know that it was a wound where a blood vessel was severed, that there was a copious flow of blood through medical evidence. Incidentally, we also know that when that wound was dressed at Raigmore Hospital, grit was found in that wound, and that quite co-incided with the prisoner's explanation that he had accidentally fallen in a ditch and cut himself on glass. That gives a premonition that the prisoner's story may have been true, and if that is the case then that link has broken down and that link breaks down altogether from that. We have got to consider first: at what stage was this wound received. I think it is going to be urged that this wound was received while the cutting operation was carried out. We know the position of one belt which was ten inches from the floor and about four feet from the floor, and we know that that belt has been produced, and we know there is a mark on that belt as if a knife had slipped there. The Prosecution may urge it was in connection with that belt that Owens received his injury. I ask your honors to keep in mind this evidence: (1) that the belt that was cut was four feet above the ground and substantially above a man's thigh (2) Lieut. Murphy's evidence that the belt was slashed with an upwards thrust, which suggests if the knife slipped it wouldn't be his thigh would be cut but his nose or something much further up. Then there are two witnesses, two Crown witnesses, who saw the accused Owens after the damage was done in the mill, and neither of these witnesses saw any trace of injury, neither did see any trace of blood; and if the wound had been received by then there was bound to have been a trace of blood - it was a wound which gave a vast flow of blood - again referring to medical evidence. The two witnesses are the girl MacKenzie and the other state witness Barrett. And there is a third witness and that is Lieut. Murphy himself who says that when he saw the two men about, they were walking briskly and he saw nothing untoward about them; nothing untoward in connection with their walking briskly, and nothing to attract his attention.

Your honors, that evidence seems to make it perfectly clear that this injury was received by Owens subsequently to the damage in the mill. I don't think there is any doubt about that. I think that has been proved. If that is the case this whole case breaks down to a finish, there is no question about that.

It may be urged that there was evidence that these men were about the mill at the time, though there were witness who are all very careful to say there might have been other people about there; and the mere fact that these men were openly about the mill doesn't in my submission tend to place any inference of guilt, but rather the other way.

If these men intended to damage and cut the belts, I think we might take it they would have done it in a more surreptitious manner, that they would not have been seen either before or after the offence had been committed.

There is one other point I am going to put forward and it is this. There was brought out of the civil detective sergeant of the police the fact that originally in this case a full investigation was made by the civil authorities for the Crown, and in Scotland all prosecutions are conducted by the Crown and there are officials in every District to conduct these prosecutions. I would ask the Court to consider this question: why in this civil offence did the Crown authorities not institute proceedings. I ask you to put that question to yourselves,and I think you will find that on these arguments and these arguments alone, I hold, not only has the Crown failed to establish a case here, but it has been established out of the mouths of the Prosecutor's own witnesses sufficient to justify my confidence in asking the Court to hold the accused here not guilty.

Pros. Mr. President, Gentlemen of the Court. Arising to take issue with my learned friend, I will say just as I said in my opening remarks that the evidence in this case is circumstantial evidence - it is not direct evidence. But in order to understand the value of circumstantial evidence insofar as it affects or binds the judgement of this Court, I will refer you to page 81 of the Manual of Military Law, chapter 6 paragraph 42. (Reads same).

Now that is what is binding on this Court, and it is the interpretation of the circumstantial evidence as presented by the Prosecution. If the evidence - the circumstantial evidence - is as consistent with the innocence as it is with the guilt of the accused then I agree with my learned friend, the benefit of the doubt should be given to the accused. But where where there is a preponerance of evidence that is consistent only with the guilt, and there is a doubt about evidence that is consistent with the innocence, a doubt that might be considered fanciful, then that is not the type of doubt that this Court gives to an accused. It must be a reasonable doubt, not a fanciful one, and I am sure that the Judge-Advocate will so instruct you when he sums up.

Now with regard to the evidence that has been submitted by the Crown. We have the evidence of Mr. Murphy. To the best of his knowledge there are only three others on the property while he was there - the two men working with him and the night watchman.

We have the evidence of the night watchman, who to the best of his knowledge knew of only two others that were working on the property during the period at which the damage must have taken place from the evidence; that is the two mechanics that were working in the mill.

We have the evidence of the two mechanics from General Workshops, Corporal Bowker and Private Jones. Both workmen were working in the very spot where the damage was caused. They commenced their work at approximately 5:30 in the afternoon and did not complete their work until approximately 6:30, and at the time of their departure at 6:30 there was no damage committed underneath the mill, and the machinery and equipment was in proper running order. Can all that be co-incidental.

We have the evidence of Mr. Murphy that at 7:15 he came out on the landing and saw the accused and another soldier briskly walking away from the mill, and my learned friend says what actions of theirs were surreptitious. I will say this: that the action that they took a roundabout way,it seems to me, to leave the millyard to arrive at a point that they could have taken a short-cut to and they were practically on the start

of that short-cut when they started out, is in itself a surreptitious circumstance.

Then we have the evidence of Mr. Murphy, the girl MacKenzie, and Mr. MacKenzie, as to the accused walking across the field; and is it not reasonable for any man who has heard this evidence to come to the conclusion that the reason he walked across the field was the same reason that he walked around the bush, that is so that they wouldn't be able to see him at too close quarters. The man with him didn't walk through the field. He apparently had nothing to hide, but the accused who had been wounded did walk through the field, and according to the evidence of Mr. MacKenzie, the pub keeper, he walked with a limp. If he was not acting surreptitiously there was no reason to walk through the field. When he got out to the highway the truck was seen and was seeing people, and consequently it would be natural for him to make every effort to walk in a manner that was perfectly natural.

My learned friend points out that the girl MacKenzie spoke to Owens at the junction of the path or road into the MacKenzies Pub. If you will recall - in her evidence she spoke to him for a minute and to the question I put to her, "Did you observe his clothing?" she said no she didn't.

My learned friend raised another point. It is a point which I don't think is considerably well taken. That is why did not the civil authorities prosecute. I can only point this out, that the civil authorities as a rule will not prosecute where the offence is one that has occured on military property and effects military personell only. They have the right to, true, and they are always called in as a matter of courtesy; but in every instance where there is no civilian involved in the offence and where it has been committed on military property and effects military personnel only, I have yet to see an instance where they have carried out the prosecution, but have in all cases turned it over to the military authorities for prosecution.

I submit, Mr. President, that a very, very prima facie case has been established by the Prosecution, and if you find so then the accused should be put on his defence.

J.A. In pursuance to R.P.70, does the Defending Counsel wish to reply to the Prosecuting Officer's answer.

Def. No, Sir.

J.A. At the present time, Gentlemen of the Court, you have to consider a motion made on behalf of the defence that no prima facie case has been made out, and therefore the accused should not be called upon to give a defence.

As has been pointed out, in this particular case the evidence has been not direct evidence effecting the accused, but circumstantial evidence. It is not necessary for me to repeat the law of circumstantial evidence as both the learned counsel for the Prosecution and the Defence have spoken at length on it, and the law they have stated is quite true. The Prosecuting Officer has quoted from the Manual of Military Law, and I will not repeat that quotation, but I wish the Court to consider at this point that they are acting in the function of Judge at the present moment; they are not functioning as a Jury; the Court is functioning as Judges. You must now consider at this time whether there is sufficient evidence to go ahead and whether you wish to withdraw the matter from yourselves as Jurymen at this particular point.

I understand that it would be rather difficult to understand that, but please act as Judges only at this time. Weigh the evidence; consider whether there has been a chain of circumstances which implicate the accused. If you find that the

circumstances are strong and that there is no reasonable conclusion to come to, that there is no other inference than that the accused is connected with this, then in such case you may disallow the motion. But if on the other hand you come to the conclusion that the evidence is not sufficiently strong to connect the accused with it, and that it is possible for someone else to be connected with it and that it is not reasonable that this accused is connected with it, then in that case you should advise yourselves as Jurymen that you are not as Judges, owing to the law in the case, to put it to yourselves.

As both the Prosecuting Officer and Defending Counsel have pointed out, the matter of reasonable doubt will also aid you at this point. According to the law of England which is the law which controls us in a Court-Martial, an accused is innocent until he is proved guilty by the prosecution.

If you will bear that in mind in your deliberations, I don't think I will say any more.

The Court is closed to consider their decision.
The Court overrule the plea.
The Court is re-opened, and the above decision is made known to the accused.

Pres. I must advise the Court that the motion has been disallowed.

J.A. You will now be called on for your defence. Before I ask you a certain number of questions I want to make an explanation to the accused. 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, as I say the Prosecuting Officer may cross-examine you, the Court may cross-examine you, and I as Judge-Advocate may cross-examine you. You may however make a statement without being sworn and you will not be subject to cross-examination. A statement which could have been made on oath will not carry with the Court as much weight as might a sworn statement. You may call witnesses in your defence and as to character whether you give evidence or make a statement or do neither. You also have the choice of making neither a statement on oath or a statement; that is to say you may just choose to say nothing. Now I will ask the necessary questions.

Q.1310. Do you wish to give evidence yourself as a witness, make a statement, or do neither?
A.1310. No, Sir.

Q.1311. I shall put it this way to you. Do you wish to give evidence yourself as a witness?
A.1311. No, Sir.

Q.1312. Do you wish to make a statement?
A.1312. No, Sir.

Q.1313. Do you wish to say anything in your defence?
A.1313. No, Sir.

Q.1314. Do you intend to call witnesses on your behalf?
A.1314. No, Sir.

Def. I would like to call one witness as to character.

1st Witness Defence — Major L.M. Hanbury, O.C., No. 18 Coy Canadian Forestry Corps, being duly sworn, is examined by Defending Counsel:

Q.1315. Are you Major Hanbury?
A.1315. I am.

Q.1316. Are you the Officer Commanding No. 18 Coy Canadian Forestry Corps?
A.1316. I am.

Q.1317. And do you know the accused Owens?
A.1317. Yes, I do.

Q.1318. Will you be good enough, Major, to give the Court any information you have as to the accused' character, as far as it is known to you personally?

A.1318. I have known the accused since June, 1941, at which time I was Officer in charge of Kiltarlity Mill where the accused was employed. After he had been working under me for some weeks I was very impressed with the manner in which he carried out his duties, with his keenness, and at that time I did recommend to the then Officer Commanding No. 15 Coy that Owens be considered for promotion and trades-pay. I thought at that time that he was considerably above average in his keenness on the job at that time. Since that time I have only known him - my association with him has not been close, but I have known him in the way of sports and recreational activities. I have known him as a member of one of the District baseball teams, known him as a keen sportsman then. I believe that is all I know about him.

Prosecutor declines to cross-examine this witness.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with Rule of Procedure 83(B).

The witness withdraws.

Def. May we call one further witness please.

2nd Witness Defence

Lieut. G.C. Murphy, Officer i/c Kiltarlity Mill, No. 15 Coy Canadian Forestry Corps, being recalled, is examined by Defending Counsel on his former oath:

J.A. Mr. Murphy, you have already been sworn so you will be giving character evidence on your previous oath.

Q.1319. Mr. Murphy, we are speaking of character, do you know the accused Owens?

A.1319. I knew him from the time I have been here until now, Sir.

Q.1320. How long is that?

A.1320. I have been with this company approximately five months and a half, Sir.

Q.1321. Would you be good enough to tell the Court what you know of this man's character of your own knowledge?

A.1321. During the time I have been at Kiltarlity Mill Owens has always worked in the yard, always done his work as he should do. From time to time I have had to use him in the mill, and I can't honestly say that he done anything but his duty in an honest manner. I have spoken to him several times in the yard and he was always very courteous. In other words, I have never known him to be anything but what a good honest soldier should be.

The Prosecutor declines to cross-examine this witness.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with Rule of Procedure 83(B).

The witness withdraws.

Def. That completes the case for the accused.

J.A. The Prosecutor will give his closing address and then the Defending Counsel makes his replying address.

Closing address by the Prosecutor.

Mr. President, Gentlemen. I don't intend to sum up any further then I did in taking issue with the motion. The result of the motion in being disallowed showed that the Court accepted that a prima facie case has been established. Nothing has since been put before the Court to upset their decision.

Closing address by the Defending Counsel.
Mr. President, I am to some extent in much the same position, except this; that since I addressed the Court there have appeared two officers speaking of the character and the record of the accused, and the Court will decide whether it is likely that the accused being of the character which has been described to them would be guilty of the offence of which he is charged.

There is one other point I wish to urge on the merits, and that is on the question of the knife, which evidence, no doubt, is regarded as one of the links of the circumstantial chain of evidence. The point I have to make there is that the medical evidence is that there would be blood on that knife. No blood appears to be found on the knife in the evidence; there is no evidence even that the knife was subjected to clinical examination; there is no evidence whatever to support the theory of any blood found on that knife.

Apart from that one remark I have nothing further to add.

J.A. I have already given an address in which I gave some views pertaining to circumstantial evidence, and I am very much in the same position as both the Defending Counsel and Prosecuting Officer concerned, in that I have explained to the Court on a previous occasion this afternoon the law in regard to circumstantial evidence. Does the Court at this time require me to elaborate any further?

In the opinion of the Court and the Judge-Advocate, a summing up by the Judge-Advocate is considered unnecessary.

The Court is closed to consider the finding.
The Court find the accused Not Guilty on the second charge.
The Court is re-opened, and the accused again brought before it.

Pres. I am going to read out the second charge to you.(Reads same).
Private Owens, the Court finds you Not Guilty on this charge.

J.A. We will now proceed with the trial on the first charge to which you have pleaded guilty. Take your seat.
I will now read the first charge.(Reads same).
We will proceed. It has been explained to you previously concerning a plea of Guilty on a charge and a plea of Not Guilty on another charge, that the charge to which you have pleaded Guilty would be tried after a charge on which you have pleaded Not Guilty, and so I will ask you again whether you understand the nature and meaning of the charges, and put it to you this way. The Court will now receive any statement you desire to make in reference to the charge. 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, 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.
Q.1322. Do you wish to make a statement?
A.1322. No, Sir.

J.A. We will now consider the Summary of Evidence insofar as it affects the charge on which you pleaded Guilty, Absence without Leave of four hours. (Judge-Advocate reads extracts from Summary of Evidence relating to first charge.)

Summary of Evidence EXHIBIT "M"

Closing address by the Defending Counsel.
Mr. President, I am to some extent in much the same position, except this; that since I addressed the Court there have appeared two officers speaking of the character and the record of the accused, and the Court will decide whether it is likely that the accused being of the character which has been described to them would be guilty of the offence of which he is charged.

There is one other point I wish to urge on the merits, and that is on the question of the knife, which evidence, no doubt, is regarded as one of the links of the circumstantial chain of evidence. The point I have to make there is that the medical evidence is that there would be blood on that knife. No blood appears to be found on the knife in the evidence; there is no evidence even that the knife was subjected to clinical examination; there is no evidence whatever to support the theory of any blood found on that knife.

Apart from that one remark I have nothing further to add.

J.A. I have already given an address in which I gave some views pertaining to circumstantial evidence, and I am very much in the same position as both the Defending Counsel and Prosecuting Officer concerned, in that I have explained to the Court on a previous occasion this afternoon the law in regard to circumstantial evidence. Does the Court at this time require me to elaborate any further?

In the opinion of the Court and the Judge-Advocate, a summing up by the Judge-Advocate is considered unnecessary.

The Court is closed to consider the finding.
The Court find the accused Not Guilty on the second charge.
The Court is re-opened, and the accused again brought before it.

Pres. I am going to read out the second charge to you.(Reads same). Private Owens, the Court finds you Not Guilty on this charge.

J.A. We will now proceed with the trial on the first charge to which you have pleaded guilty. Take your seat.
I will now read the first charge.(Reads same).
We will proceed. It has been explained to you previously concerning a plea of Guilty on a charge and a plea of Not Guilty on another charge, that the charge to which you have pleaded Guilty would be tried after a charge on which you have pleaded Not Guilty, and so I will ask you again whether you understand the nature and meaning of the charges, and put it to you this way. The Court will now receive any statement you desire to make in reference to the charge. 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, 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.

Q.1322. Do you wish to make a statement?
A.1322. No, Sir.

J.A. We will now consider the Summary of Evidence insofar as it affects the charge on which you pleaded Guilty, Absence Without Leave of four hours. (Judge-Advocate reads extracts from Summary of Evidence relating to first charge.)

Summary of Evidence EXHIBIT "M"

The Court is closed.
The Court is re-opened and the accused is again brought before it.

J.A. Q.1323. Private Owens, do you wish to give evidence yourself or to call any witnesses as to your character?

A.1323. No, Sir.

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 Counsel for examination, and then to the Court for admission in evidence.

Statement as to Character and Particulars of Service of Accused. EXHIBIT "N"

Certified copy of Conduct Sheet EXHIBIT "O"

J.A. Do you wish to address the Court on the Statementand Conduct Conduct Sheet, and in mitigation of punishment?

Def. I don't want to detain the Court in any way, but I would just like to point out that unfortunately on this date 14th September the mill unfortunately broke down. Then still more unfortunately this accused went to the pub and there they proceeded to hold a party; but I must say I don't think there was any great effort expended in trying to get them back to the mill. The other point is one of which the Court is aware, the fact that this man has been under close arrest since September, the date of his offence.

J.A. The sentence of the Court to be awarded will be promulgated later, and in view of the fact that there is another accused to be tried on a similar charge sheet, the Court consider it desirable in the interests of Justice to post-pone the consideration of sentence to be awarded to Private Owens until after the trial of the accused Private Hayes.

Pres. The proceedings in open Court are accordingly terminated.

At 1200 o'clock on the 8th day of December, 1943, the Court assembled in closed court to consider sentence, after the trial of G-48055 Pte. J.L. Hayes had been concluded.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAS/1097 (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.
G.48037	Private		Ernest Patrick	OWENS	No.15 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) 26 Nov. 43 endorsed by me, (~~or by an officer under my command for him~~), "To be tried by Field General Court-Martial". C.E.F.

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 convening officer~~) C.E.F.

(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 the three Offrs for the Court by a Field Officer, (or the command has ceased here)~~ C.E.F.

(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.H. Dunlop	O.i/c Mil.Trg. H.Q.,C.F.C.

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Major	O.V. Maude-Roxby,M.C.	No.19 Coy.C.F.C.
Capt.	G.D. Baxter	No.28 Coy.C.F.C.

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Major	K.W. Carlisle	No.10 Coy.C.F.C.
Lieut.	G. Johnson	No.18 Coy.C.F.C.

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt.	W.H. Waugh	Gen. List

On Active Service in the Fd

in Scotland
(Country.)

C.E.F. Jones
(Signed personally. RP 105 fn 2) C.E.F.Jones) Colonel (Rank.)

Date 26 Nov. 1943.

Commanding Canadian Forestry Corps
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Ja.: 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 565(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 85(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

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This is to certify that I have this day examined:

G.480327 Pte. Owens, E.P.

of No. 15 Company, Canadian Forestry Corps, and find him medically fit to appear before a Field General Court Martial.

(W.G. West) Capt., RCAMC,
M.O. i/c No. 5 District,
Canadian Forestry Corps

6 Dec 43
SEO/

"C"

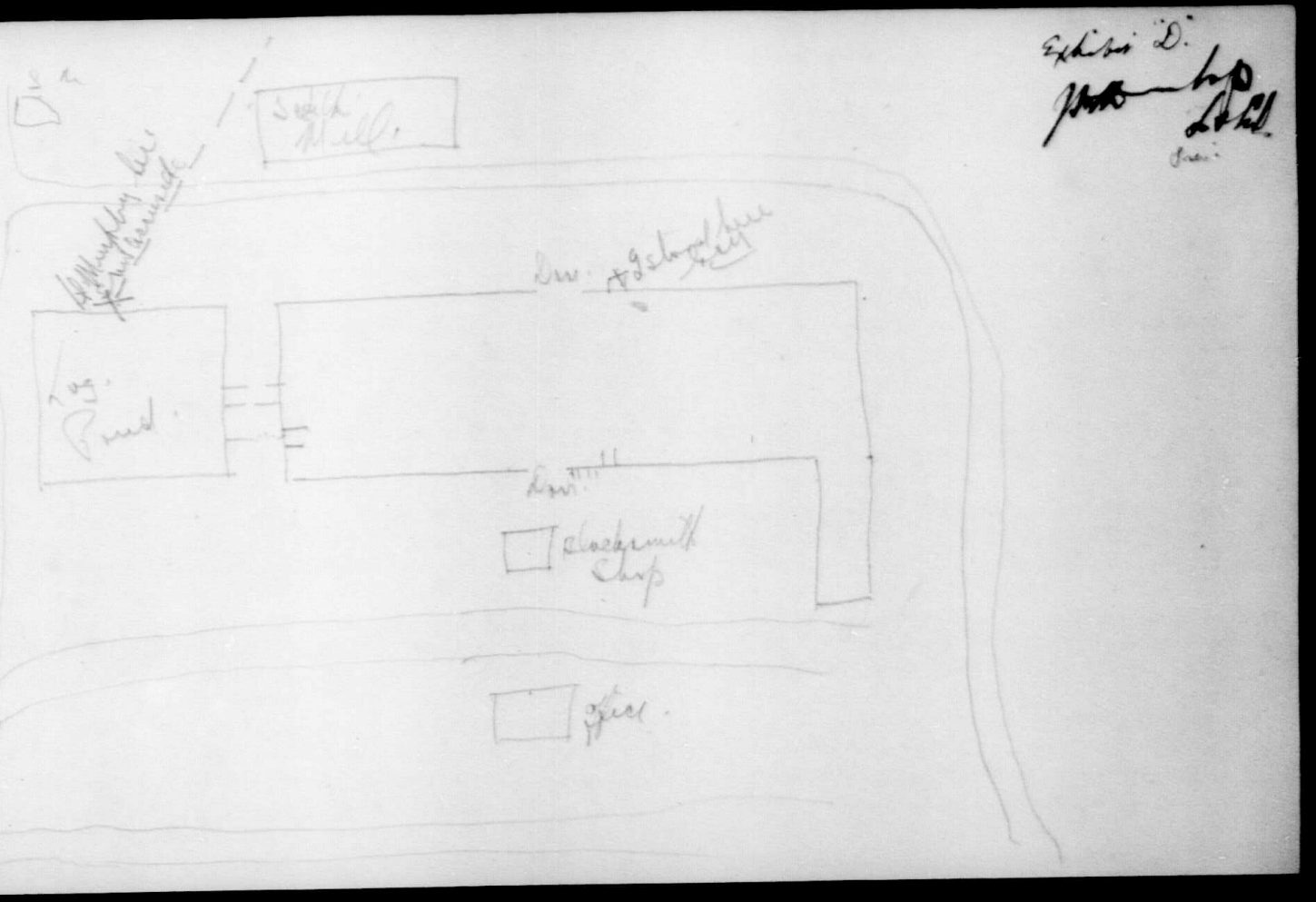
NO. 15 COMPANY,
CANADIAN FORESTRY CORPS

This is to certify that
I have this date examined:
G.48037 Pte. Owens, E.P.
and find him medically fit/~~unfit~~
to undergo trial by Field
General Court Martial.

(W.G. West) Capt., RCAMC,
M.O. i/c No. 5 District,
Canadian Forestry Corps

7 Dec 43
SEO/

Exhibit D.



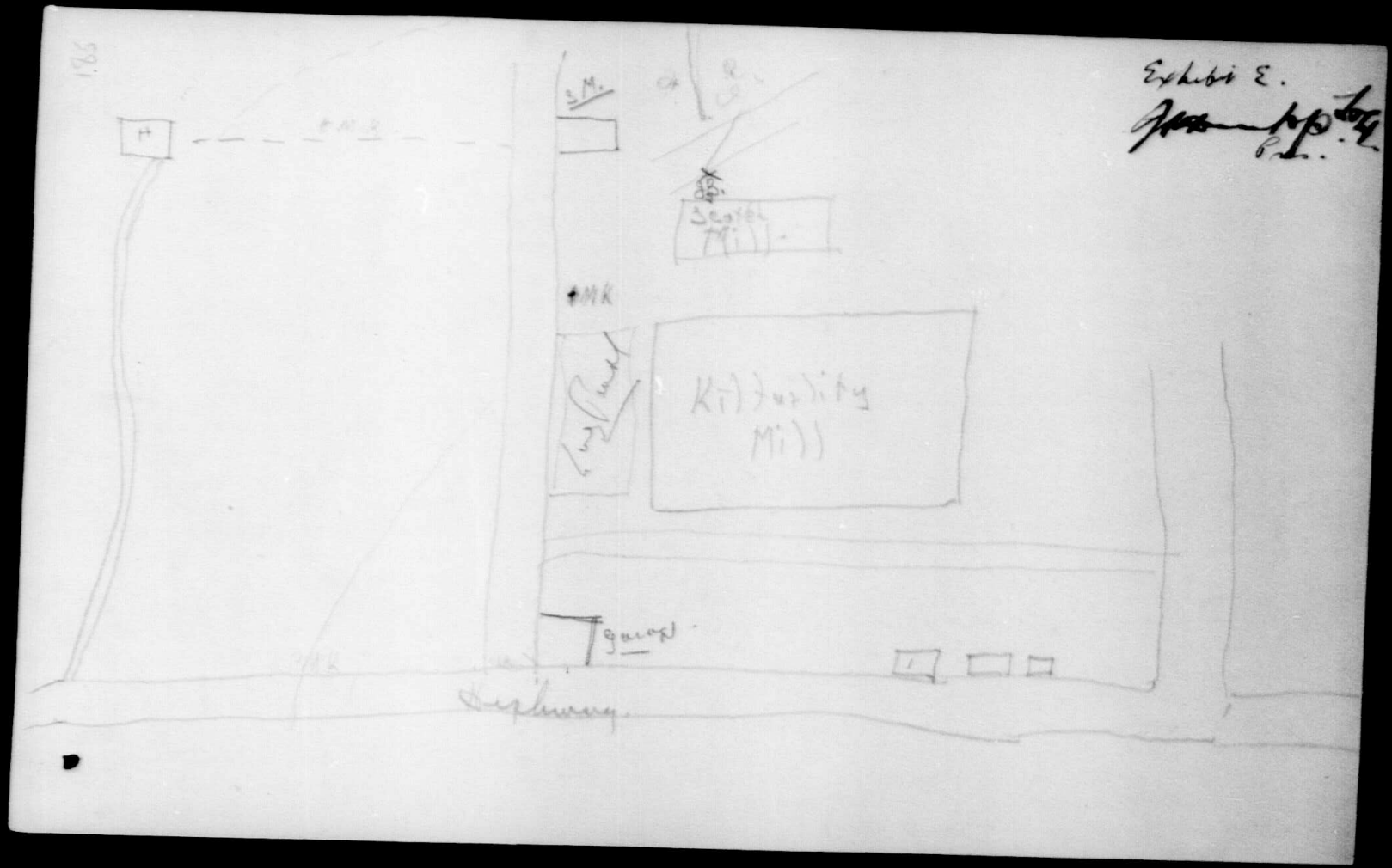


Exhibit E.
Mill
Mill
Highway

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Description of Exhibits of a bulky nature which are urgently required by the C.O. No 15 Coy C.F.C. and which have been released to him.

Exhibit "F" Handsaw.

Exhibit "G" Trimmings from cut belts together with cut belt lacings and wires cut from motors

Exhibit "H" Metal fuel tubing.

Exhibit "I" Remains of corner drive belt originally a 45 foot belt.

Exhibit "J" Battle dress Blouse

Exhibit "K" Trousers overalls.

Exhibit "L" Knife, clasp.

8 Dec 43

J H Haugh Capt L & Col.
Pres.

J H Haugh Capt
J.A.

"M"

SUMMARY OF EVIDENCE IN THE CASE OF

G.48037 Pte. OWENS, E.P.
NO. 15 COY C.F.C.

SUMMARY OF EVIDENCE IN THE CASE OF

C.48037 Private OWENS, E.P.,
NO. 15 COY C.F.C.

By Direction of the Officer Commanding, No. 5 District C.F.C., all evidence to be taken under oath.

1st WITNESS

Lieut. C.C. Murphy, Officer i/c Kiltarlity Mill, No. 15 Coy C.F.C., having been duly sworn, states:-

I am the Officer in charge of Kiltarlity Mill, Canadian Forestry Corps. When we went to start back at work on Tuesday 14th September at 1 o'clock we had a breakdown which necessitated closing the mill for approximately two hours, during that time all the men were put to work at various jobs to keep them busy. When we were ready to resume operations, I was told by the Mill Sergeant that several of the men were absent. I asked him to round them up, which he did with the exception of four particular men, Privates Cripps, Miles, Owens and Hayes. With the numerous duties that had to be carried out, I paid no more attention to the absence of these men except to instruct the Sergeant, Sgt. Parker to do his best to get them back. When I found that they had not come back I instructed Sgt. Parker to lay a charge of Absent without Leave, which he did so.

Shortly before closing time we had a slight accident which made it imperative for me to go back to the mill after tea. When we had finished repairing the trouble I went down to have a look at the engines which had given us trouble previously, and noticed Owens and Hayes making a rather hurried trip through the mill yard. I thought no more about it except to make up my mind to ring the Sergeant Major of 15 Coy and ask him to have these two men picked up. That was the only thought that went through my mind.

I then proceeded through the engine room and noticed as I was passing through that a number of belts had been cut, my only thought then was to ring up 15 Company and report the damage with the intention of ringing up Major Kennedy with the same idea in view. I then proceeded to carry out measures to remedy the situation. I have absolutely no idea who caused the damage.

On my way to the telephone kiosk, I noticed Hayes coming out of the road from McKenzie's store. I also noticed Owens crossing the field towards the same road. When I arrived at the telephone, I had to wait a few minutes while Hayes carried on a private telephone conversation. When he came out I suggested to him, rather firmly, that he go back to camp. I asked him "Have you been in the mill yard tonight", he told me he had not. I then got through to 15 Company and went back to the mill.

Q. When you asked Hayes if he had been in the mill, this was after you said you saw Hayes and Owens going hurriedly through the mill yard?
A. Yes, sir. By this time the mill office was open, I telephoned Major Kennedy, explained to him the extent of the damage and asked for his assistance. Shortly, I was shown considerably more damage to other parts of the mill, namely three motors. I telephoned Major Kennedy again and he sent the necessary mechanics and the District Transport Officer to repair the motors and I proceeded to repair the belts.

Q. You mentioned McKenzie's store, is that also a pub?
A. Yes, sir.

Q. The damage done to the belts, could that have been accidental?
A. No, sir.

Q. What instrument or instruments were used to damage the belts would you say?
A. All the damage was done by a very sharp knife, there were signs of an attempt being made to damage one belt with a handsaw, but it was a very futile attempt and all the damage was done by a sharp knife.

Q. The damage to the engines, could it have been accidental in your opinion?
A. No, sir.

Q. Who was with you when you were working in the mill previous to discovering the damage?
A. Sgt. Blissard of No. 5 District and Pte. Walsh of No. 15 Coy.

Q. And were they with you when you discovered the damage or did you call them?
A. I called them sir, they were not with me.

Q. Did you hear any noise that evening when you arrived to do your repair work?
A. Yes, sir. But I knew that the district mechanics should be there repairing or examining the motors, so I attributed any noise to their presence.

Q. Did you see the district mechanics there that evening?
A. Not to name any of them sir.

Q. Did you see their vehicle with their tools and equipment there that evening?
A. I saw the vehicle that they usually use leaving the mill.

Q. Was that before or after you discovered the damage?
A. Before, sir.

Q. How much before?
A. I would say half an hour.

Q. You stated you saw Hayes and Owens walking quickly through the mill yard toward the scotch mill?
A. I saw them walking from the log pool to the scotch mill.

Q. In your opinion did they see you?
A. No, sir.

Q. Did you see anyone else there, the nightwatchman?
A. No, sir. I sent Pte. Walsh to find the nightwatchman and he found him at his duties at the steam boiler.

Q. You stated a saw was used, did you identify this saw as part of the mill equipment?
A. Yes, sir.

Q. When you instructed Sgt. Parker to get these men back, back to where?
A. Back from McKenzie's pub, sir.

Q. What did Sgt. Parker report to you on his return?
A. He reported that they promised him to get back as soon as possible, but he also reported that they had considerable beer which they intended to drink, so I decided it was no use bringing them back because I didn't see that they would be in a fit shape to work for the rest of the afternoon.

Q. Did Sgt. Parker at any time suggest or report to you that these men had suggested to him that they were not getting a square deal at the mill?
A. I wouldn't interpret Sgt. Parker's remarks that way, sir. He did say that they wished to have a talk with me about working conditions and my reply was that he should know and they should know that they could talk to me at any time, either on duty or off.

Q. Had these men ever complained to you that they had a grievance of any kind?
A. No, sir.

Q. Did you hand over to the civil police any articles which were considered might be evidence in this matter?
A. Yes, sir. Several pieces of belt which had been cut and the handsaw in question.

Q. Lieut. Murphy, Do you recognize these articles here?
A. Yes, sir. They are the slashed belts, etc., given to Det. Sgt. Urquhart for his investigations and are listed as follows:-

One piece 6" balatta belting.
One piece 4" balatta belting.
Two pieces 12" balatta belting.
Number of pieces pigskin leather lacing.
Hand saw.
Three pieces copper piping.
One 12" Corner drive balatta belt approx. 45' long.

The Accused declines to cross-examine the witness.

.....
(G.C. Murphy) Lieut.

2nd WITNESS

G.48173 Sgt. Parker, R., Mill Sergeant, No. 15 Coy C.F.C., having been duly sworn, states:-

About 3.30 p.m. I was told to go to McKenzie's pub to see if any of the boys were over there still, and if they were, ask them if they were coming back.

Q. Did you go into the pub?
A. Yes, sir.

Q. And what soldiers from Kiltarlity Mill were in the pub when you arrived?
A. When I arrived, outside were Owens, Hayes, Cripps and Miles.

Q. Did you order these four men back to work?
A. No, sir.

Q. Why not?
A. My instructions were to go and find out why they weren't coming back.

Q. And what did you find out?
A. They said they were coming back as soon as they had finished their beer.

Q. Had they much beer with them outside the pub?
A. Yes, sir.

Q. How many bottles?
A. I couldn't say, sir.--4 or 5 glasses.

Q. Did they appear to be under the influence of liquor?
A. Yes, sir. to a fair amount.

Q. Did they appear to be congenial, happy, or were they in a stubborn mood and antagonistic?
A. Well when I was there they were quite happy singing and had a scotch tinker dancing for them.

Q. And when you asked about coming back, did they resent you being there?
A. No, sir.

Q. In other words they were having a party and just didn't feel like going back to work that day?
A. Yes, sir.

Q. What did you report back to Lt. Murphy regarding these men?
A. I think I told him they would be over after they had drunk their beer.

Q. Did you have occasion later in the day to see Ptes. Owens or Hayes?
A. I went over again around 5 o'clock, I didn't want them in the mill under the influence of drink, but they said there was only 5 more minutes before the pub opened.

Q. Is that the last time you saw them that day?
A. Until I had instructions to pick them up.

Q. Who instructed you ?
A. The Sergeant Major.

Q. And what were his instructions?
A. To pick up Owens and Hayes.

Q. Where?
A. He didn't say--around the mill.

Q. Tell us what you did?
A. I left the camp and proceeded to the mill and met Lt. Murphy, who told me that Owens was at the Nurses. I went over and picked him up, the Nurse said he needed medical attention, so I took Owens to the M.R.D. at 18 Coy, got the Orderly Sergeant there and gave him instructions that Owens was under arrest.

Q. And did you tell Owens that he was under arrest at the time?
A. I can't remember if I did or not.

Q. Was Owens behaving himself when you saw him?
A. Yes, sir.

Q. Was he in complete control of himself, not creating a disturbance?
A. Quite normal, sir.

Q. Did he show that he was under the influence of liquor whilst he was at the nurses home?
A. He showed slight signs of it, sir.

Q. What did you do then, after you left the M.R.D. at 18 Coy?
A. I went looking for Pte. Hayes, returned to the mill, saw Capt. Curry to get a work ticket to go to Beauly. Went to Hayes home and picked him up.

Q. Who was with you?
A. Ptes. Hewitson and Scott.

Q. Did you go into the house of Hayes?
A. Yes, sir.

Q. Who went in the house with you?
A. The truck driver.

Q. What was his name?
A. Oh, I can't remember it.

Q. Where was Hayes in the house and who was with him?
A. He was sleeping in front of the fireplace and his wife was with him. I woke him up and got him dressed, had a cup of tea and came back to camp.

Q. Did you bring Hayes bicycle back with you?
A. No, sir.

Q. Was Pte. Hayes, in your opinion, under the influence of liquor when you woke him up?
A. Yes, sir.

Q. You state you picked up Owens at the Nurses'?
A. Yes, sir.

Q. Why was he at the Nurses?
A. He had a cut on his thigh.

Q. Did you enquire as to how he cut himself?
A. Yes, sir.

Q. And what was his reply?
A. He said he fell in a ditch.

Q. When you picked up Owens at the Nurses' HOme, did his clothes bear any evidence of dirt, or leaves, such as would be there from a fall hard enough to have cut himself?
A. I couldn't say sir.

Q. On your way back from Beauly with Hayes, did he appear to be quite normal, or so much under the influence that he was unable to understand you?
A. No, sir. He could understand me.

Q. He appeared quite normal?
A. Yes, sir. Perfectly normal.

Q. Did Hayes or Owens at any time complain to you that they were not getting fair treatment at Kiltarlity Mill?
A. Well- in a way, sir. They tried to explain to me that they needed a Sergeant from 15 in the yard. They said if they had a Sergeant from 15 in the yard they wouldn't get so many dirty jobs.

Q. This conversation took place at the pub?
A. Yes, sir.

Q. Did they express that as one of the reasons for not coming to work?
A. No, sir. as far as I can remember.

Q. There was no question at the pub when you were there that afternoon that Hayes or Owens said they would not be allowed to work together?
A. Yes, sir. I think there was.

The accused declines to cross-examine the witness.

R.R. Parker.....
(G.48173 Sgt. Parker, R.)

3rd WITNESS

G.48924.8 Pte. Myles, W.H., NO. 15 Coy, C.F.C., having been duly sworn, states:-

Q. Who was with you?
A. Pte. Cripps, sir.

Q. And who was in the pub when you arrived there?
A. Owens and Hayes.

Q. Were you asked that afternoon to go back to work?
A. Yes, sir. After the mill started.

Q. Who asked you to go back to work?
A. Well, Sgt. Jewel came over first.

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Q. And who came over after?
A. Sgt. Parker.

Q. Did you and Cripps go back to work?
A. No, sir. we didn't.

Q. Did Owens and Hayes go back to work?
A. No, sir.

Q. What did you tell Sgt. Parker about not going back?
A. I said I would be right over.

Q. Hayes and Owens, what did they say?
A. I don't just remember what they said.

Q. What happened afterthat, did you stop or go away?
A. No, sir. We stayed there, we had a few more drinks of beer.

Q. How long did you stay there?
A. We stayed there until the pub opened and then we went into the pub, we stayed until about 6.30, I think.

Q. Where were Owens and Hayes?
A. I don't know they went out.

Q. Who came down and took you back?
A. Sgt. Desk and Harry Gill.

Q. Was there any question, or did any question arise that Owens and Hayes in your presence told Sgt. Parker that they were not getting a fair deal in the yard?
A. Yes, sir. they said that.

Q. Did they during the afternoon give any impression that they were disgruntled and not at all pleased with the way -
A. No, sir, that every word I ever heard them say.

The accused declines to cross-examine the witness.

W. H. Myles
(G.48924.8 Pte. Myles, W.H.)

1st. ~~RRR~~ WITNESS RECALLED

Lieut. Murphy, having been recalled, was questioned as follows:-

Q. In the evening of 14th September, did you tell Sgt. Parker, when he came down with an escort, that Owens was in the Nurses Home?
A. I told him to look in there first, because it had been reported to me that he was there looking for medical attention.

Q. Can you recall who told you?
A. Yes, sir. Pte. Neale of 15 Coy. He came to me and asked me for assistance to get Owens either to the M.R.D. or to hospital, to have his cut attended to.

Q. Was Neale sober?
A. Yes, sir.

Q. How was he dressed, working clothes, or walking out clothes?
A. I think he was walking out.

Q. You yourself did not go to the Nurses' Home?
A. No, sir.

Q. Did he tell you how he knew Owens was cut?
A. No, sir. he merely reported that he was badly cut and in his opinion he should have medical attention.

The Accused declines to cross-examine the witness.

G. C. Murphy
(G.C. Murphy) Lieut.

4th WITNESS

G.48122 Pte. Arseneault, G., No. 15 Coy C.F.C., having been duly sworn, states:-

Q. On the evening of 14th September, did you see Owens and Hayes?
A. I did.

Q. Will you state what you do in this Company?
A. Motor Mechanic, sir.

Q. Will you tell us what you did about 7.30 on that evening?
A. I was going out to do a job and on my way down I met Hayes, down near the telephone booth in the village of Kiltarlity. He asked me to take a fellow to the doctor. I said "Yes". We went on a little further, to where Owens was standing.

Q. Where was he standing?
A. In front of McKenzie's gate. -- Then Hayes wanted me to go to Beauly, and I wouldn't go.

Q. Why did he want you to go to Beauly, to take Owens there?
A. He wanted me to go to the doctor.

Q. Did you take Owens to the doctor in Beauly?
A. No.

Q. And what happened then?
A. I just left the two of them there and went on to my work.

Q. Did they appear to be quite sober?
A. I never noticed they were drunk or anything.

Q. When Hayes stopped you, did he tell you he wanted you take Owens who was hurt to Beauly?
A. He told me there was a fellow that was hurt.

Q. What time would you say it was that you saw Owens and Hayes in Kiltarlity?
A. It was somewhere around 7.30.

The accused declines to cross-examine the witness.

G. Arseneault
(G.48122 Pte. Arseneault, G.)

5th WITNESS

P manford Perley

G.48106 Pte. Steward, M., No. 15 Coy C.F.C., having been duly sworn, states:-

Q. You are a driver in No. 15 Coy?
A. Yes, sir.

Q. Did you accompany Pte. Areseneault on Tuesday 14th September on the way to Drumnadrochit to carry out some repair work?
A. Yes, sir.

Q. And at what time did you leave to carry out this work?
A. I couldn't say for sure, around 7 o'clock.

Q. On your way did you go through the village ofKiltarlity on the road that leads to Kiltarlity Mill?
A. Yes, sir.

Q. Did you see Hayes that evening on your way home?
A. Yes, sir.

Q. Whereabouts?
A. Along by the Post Office.

Q. Is the telephone near the Post Office?
A. Yes, very close.

Q. Did you stop and speak to Hayes?
A. Yes, sir. we stopped.

Q. And did you khear Hayes ask Arseneault to take anyone to any place?
A. I heard them talking about something, I couldn't hear what it was.

Q. Did you at any time see Owens?
A. Yes.

Q. Where was he when you saw him?
A. He was standing against the fence just along from the Post Office.

Q. Was that near to the entrance of the pub?
A. Yes, sir.

Q. Did you hear Arseneault say that he would not be able to take Owens in the truck?
A. Yes, sir.

Q. Did you notice whether Owens was hurt or not?
A. No, sir.

Q. Did both Hayes and Owens appear to be sober?
A. No, sir. I don't think they were.

Q. Did you notice anything unusual about them?
A. No, sir.

Q. Have you been questioned by the civil police in this matter?
A. Yes, sir.

Q. Were you quite close to both Hayes and Owens?
A. No, sir. I didn't get out of the truck at all.

Q. Could you tell whether they were sober or not?
A. Well, I couldn't swear to it, sir.

The accused declines to cross-examine the witness.

M P Stewart
(G48106 Pte. Stewart, M.)

6th WITNESS

G 5095 Pte. Barrett, J., No. 15 Coy C.F.C., having been duly sworn, states:-

Q. You are the nightwatchman at Kiltarlity Mill?
A. Yes, sir.

Q. And were you on duty from 5.30 on the 14th September until 7.30 on the 15th September?
A. I was.

Q. Did you at any time in the evening have occasion to see Owens and Hayes, who are now seated before you?
A. I did.

Q. Will you please tell us where and when?
A. I saw them on the west side of the boiler room of the scotch mill, I can't be sure of the time, --between 6 and 7 o'clock.

Q. What were they doing?
A. They were standing there talking.

Q. Near the boiler room?
A. Yes, sir.

Q. Did you speak to them?
A. I just spoke to them, sir.

Q. And who answered you?
A. Owens.

Q. How did they appear, did they appear to be quite normal?
A. Well, I would say they were.

Q. Were they showing any signs that they had been drinking?
A. I wouldn't say they had been drinking.

Q. Did you not think it unusual to see them at the mill at that time?
A. I did at that time in the evening.

Q. And how were they dressed?
A. In their working clothes.

Q. Did they appear to be excited or anything at all when you saw them?
A. Well I would say that they did.

Q. Did you have occasion to go to McKenzie's pub that evening?
A. No.

Q. Were you asked by anyone to call a truck or escort to McKenzie's pub?
A. I was.

Q. By whom?
A. Miss MacKenzie.

Q. In what manner did you receive that message?
A. She came over and asked me If I would call 15 Coy and ask for someone to call for some of the boys.

Q. Did she mention who was there?
A. She did, Owens, Hayes and some of the other boys, she didn't know their names.

Q. Did you take an action in this matter?
A. I did.

Q. What did you do?
A. I called the Sergeant Major of 15 Coy.

Q. Did you have occasion that evening to be called into the main mill by anyone?
A. I did.

Q. Who called you?
A. Pte. Walsh.

Q. And what did you do when he called you?
A. I went over to the office as he said that Lieut. Murphy wanted me, I went over and Mr. Murphy wasn't there, he had gone to telephone as the door was locked. He told me the belts in the mill was all cut, so I went over and had a look.

Q. Could you tell in what manner they were cut?
A. They were cut with something sharp.

Q. Did you notice the damage to the engines?
A. Not at that time.

Q. Did you look?
A. I did.

Q. There are three engines in the mill are there not, did you notice damage on how many engines?
A. Two engines.

Q. How long have you worked in mills?
A. About 16 months.

Q. Previous to joining the army did you ever work around a mill?
A. I did for one week.

Q. Did the damage in the mill look like an accident or deliberate?
A. It looked deliberate.

Q. You said Owens spoke to you, did Hayes speak to you?
A. No.

Q. You said they appeared to be excited, in what manner did they appear to be excited?
A. Well, they just seemed as if they were going somewhere in a hurry.

Q. Was it right after you say, that Walsh called you, or how long after did Walsh call you?
A. Very shortly after, I don't just know how long.

Q. What were you doing at the time you were called?
A. I was working cleaning the boiler.

Q. That is part of your usual duties every evening?
A. Yes, sir.

The accused declines to cross-examine the witness.

J Barrett
.....
(G5095 Pte. Barrett, J.)

7th WITNESS.

G5267 Pte. Cripps, J., No. 15 Coy C.F.C., having been duly sworn, states:-

Q. Were you over in McKenzie's bar on the afternoon of Tuesday 14th Sept.?
A. Yes, sir.

Q. Were Owens and Hayes present?
A. Yes, sir.

Q. Did they ever mention in your presence, on being asked to return to work, that they were not getting a square deal at the mill?
A. Sgt. Jewel came and ordered us to work and we told him we were coming back. Then Sgt. Parker came over and we were talking to him they were telling him about not getting a square deal, they didn't mention not going back.

Q. Did you hear at any time either of them say that if there was a dirty job they had to do it?
A. Yes, sir.

Q. Did you hear Owens or Hayes make any threat to do damage to the mill?
A. No, sir.

Q. You were drinking at the same?
A. Yes, sir.

Q. Are you prepared to say that they were sober at this time?
A. Yes, as far as I know, they were not drunk.

Q. Were you drunk that afternoon?
A. No, sir.

Q. Are you the Pte. Cripps who was picked up by the truck about 5 or 6?
A. Yes, sir.

Q. Were you drunk then?
A. I had, had a few.

The Accused declines to cross-examine the witness.

J Cripps
.....
(G5267 Pte. Cripps, J.)

8th WITNESS

K72778 Pte. BROWN, S.T., No. 18 Coy C.F.C., having been duly sworn, states:-

Q. You are the diesel engine operator at Kiltarlity Mill?
A. Yes, sir.

Q. On Tuesday 14th September did you perform your normal duties as engineer?
A. Yes, sir.

Q. When you returned to work that day, did you find anything wrong with your No. 2 Engine at 1 o'clock?
A. Yes, sir. There was a bit of trouble starting it.

Q. And as a result the mill was idle until about 3.15?
A. In some ways.

Q. When you left the mill that afternoon, did you leave the Ruston Hornsby engine running to provide lighting for two mechanics who were coming to do minor adjustments to No. 2 Engine?
A. Yes, sir.

Q. And had they arrived before you left?
A. Yes, sir.

Q. And had they carried out the adjustments by the time you left to go to tea?
A. No, sir. I left them there.

Q. Were you recalled to the mill that same day?
A. Yes, sir.

Q. About what time?
A. Somewhere around 8 or shortly after.

Q. What did you notice that was unusual to the normal running conditions of the mill?
A. The engines had been damaged.

Q. In what manner?
A. Such as fuel lines broken and oil lines and a few other things broken on No. 3 Engine.

Q. Was this damage done in your opinion accidently or was it done deliberately?
A. I would say it had been done deliberately.

Q. Were any of your tools, or anything else, missing when you returned that evening?
A. There was one wrench missing and a knife.

Q. Were both of these there when you left to go for tea?
A. I couldn't say about the wrench, but the knife I knowwas in its usual place.

Q. What was its usual place?
A. I kept it in the drawer.

Q. Was this knife an unusually sharp one?
A. Yes, I always kept it very sharp.

Q. Have you seen this knife since the damage was done to the mill?
A. Yes, I have seen the knife, but I couldn't really swear to it.

Q. Where did you see it?
A. I saw it in the mill office, the police officer was showing it to me. I did identify it, I had put a mark on the blade with a file and marked the dagger part on the back, but I have sharpened it several times since and it may have worn off by now.

Q. Had it been sharpened in the manner in which you usually sharpen yours?
A. Yes, sir.

Q. Was this an Army Issue Jack Knife?
A. Not a Canadian Issue, an English Issue.

Q. As this knife was marked in the dagger part, you felt reasonably sure that it was your knife?
A. Yes, sir.

Q. Did most of the men know that you had the knife there?
A. Yes, quite a few, I can't say all.

Q. You know Owens and Hayes who are here, did they ever work with you in the mill or assist you around the mill?
A. No, not that I remember.

Q. Did you have occasion to go with Major McPhail to where the knife was found?
A. Yes, sir.

Q. Will you tell us just about where the knife was found?
A. I would say it was about 200 yds from the mill.

Q. In which direction?
A. Down towards the old mill, in the brush.

Q. Would that be in the direction of the Kiltarlity pub, or McKenzie's?
A. No, not exactly, not the way we go to the pub anyway.

Q. The damage done to the belts, could this damage have been done with your knife?
A. It could have been.

Q. As an operating engineer in a saw mill such a knife is generally used for the cutting or squaring the belt previous to lacing, is that correct?
A. Yes, sir.

The accused declines to cross-examine the witness.

9th WITNESS ..... (K72778 Pte. Brosn, S.T.)

Major McPhail, No. 15 Coy C.F.C., having been duly sworn, states:-

Q. On the afternoon of Tuesday September 14th, you were the Officer Commanding, No. 15 Coy C.F.C., at that time?
A. Yes, sir.

Q. Pte. Owens and Hayes, who you now see, are under your command?
A. Yes, sir.

Q. You were a member of the Court of Enquiry concerning the damage at Kiltarlity Mill on the next day, Wednesday 16th?
A. Yes, sir.

Q. During that Court of Enquiry you made certain investigations in Kiltarlity Mill?
A. Yes, sir.

Q. Did you see the damage done in the mill?
A. Yes, sir.

Q. Could you now give us an idea of what that damage was, approximately?
A. I know that there were several belts cut, but I can't say definitely how many, and I know that there was a certain amount of damage done to the engines, I can't say exactly what parts were damaged and what parts weren't

Q. Did you notice how the cuts had been made?
A. Yes, I noticed that the belts had been cut with a sharp knife, because most of the cuts were very clean.

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Q. You did not see either Hayes or Owens on the evening of Tuesday 14th?
A. No, sir.

Q. Did you, in the course of your investigation, find a knife?
A. Yes, sir.

Q. Where did you find it?
A. I found the knife alongside a path which runs through the woods from the back of Kiltarlity Mill to McKenzies pub.

Q. And did you have this knife identified.?
A. Yes, sir. I had heard that Brown, the Engineer at the mill, had lost a knife that he keeps in his drawer and I had him call and he identified the knife as the one which he had lost the previous afternoon.

Q. Was Hayes charged by the civil police in your presence?
A. He was, sir.

Q. Was Owens charged in your presence?
A. He was.

Q. And they were both warned in your presence that anything they might say might be taken by the police and used in evidence?
A. Yes, sir. After the charges were read.

Q. Do you recall what the charge was, generally speaking?
A. Generally it was that jointly they did do wilful damage to Kiltarlity Mill by cutting a certain number of balatta belts and doing damage to the power engines.

Q. Major McPhail, I have here M.F.R. 264 concerning Ptes. Hayes and Owens, on which is mentioned--'Remanded for Dist. Commander' 'Remanded for Summary of Evidence' - Please listen carefully to this, is this the Charge you heard Dect. Sgt. Urquhart read to the accused.
(The charge is read--attached)
A. Yes, that is the charge I heard read.

Q. Were Owens and Hayes being transferred to units in the South?
A. Yes they were.

Q. Had they been notified previous to Tuesday 14th Sept. that they were going south?
A. Not so far as I know, their transfers were approved and came in the morning mail, and they would have been warned that evening.

The Accused declines to cross-examine the witness.

10th WITNESS

.....
(D.A. McPhail) Major.

Elizabeth White now Mrs. McGregor, District Nurse, Kiltarlity, having been duly sworn, states:-

Q. You are the district Nurse at Kiltarlity?
A. Yes, sir.

Q. I would like you to go back to the evening of Tuesday 14th September, You see before you two soldiers of the Canadian Forestry Corps, have you ever seen them before?
A. Yes, sir.

Q. Did you see them on Tuesday 14th Sept. between 7.30 and 8 or about that time?
A. Yes, sir.

Q. Could you tell me under what circumstances you saw them and where?
A. They came to my door wanting assistance, as one of them had a cut on his leg which was needing dressing and asked if I would do it. I asked them in and carried out the dressing.

Q. Was the cut clean or a jagged one?
A. A clean cut.

Q. And the trousers were cut?
A. Yes.

Q. Where was the wound?
A. High up on the right thigh.

Q. In your opinion were Hayes and Owens sober?
A. They had been drinking.

Q. Were they quite coherent in their speech and sensible in their actions?
A. Yes, sir. Quite.

Q. Did they ask you to obtain a doctor for them?
A. Yes, sir.

Q. And what doctor did they ask for?
A. Dr. Leitch.

Q. Is Dr. Leitch an Army Doctor?
A. Well, he does visit convalescent camps.

Q. He is not a member of the R.A.M.C. in uniform as far as you know?
A. I couldn't say about that.

Q. What did you say when they asked for Dr. Leitch?
A. Well, I didn't think it was the correct procedure. I didn't think Dr. Leitch would handle it.

Q. How long have you been a nurse?
A. I started my training about 10 years ago.

Q. Have you had much experience in surgical work?
A. Not outside hospital.

Q. Were you ever employed as a surgical nurse in a hospital?
A. That is part of our training.

Q. As a nurse, in your normal course of training, you have seen many cuts and wounds?
A. Yes.

Q. Would you say that the cut of Owens was a cut by glass or a very sharp instrument?
A. Well, it is possible that it could have been done by glass, if it was smooth enough, but it is more likely a sharp instrument.

Q. The manner of both Owens and Hayes at the time, they were at your house was quite in good order?
A. Yes.

Q. They didn't give the impression that they were drunk or disorderly at all?
A. No.

The accused declines to cross-examine the witness.

.....
(Elizabeth MacGregor)

11th WITNESS

Miss Christina MacKenzie, Housekeeper, The Shop, Allarburn, Kiltarlity, having been duly sworn, states:-

Q. You live at the shop Allarburn, Kiltarlity, with your Father Donald MacKenzie, General Merchant at the same address and you conduct a general store and public house?
A. That's right.

Q. On the afternoon of Tuesday 14th Sept. did you see these two men? Hayes and Owens?
A. In the afternoon yes, they came into the bar about 2.15.

Q. Did anyone else come in?
A. Well, I served them and went out back. My father had been at a funeral and came in between 2 and 3 and of course I didn't know who was in.

Q. Did you see Ptes. Miles and Cripps in the afternoon?
A. I knew there were four there, but I didn't see Miles and Cripps until after 5 o'clock.

Q. Did you see Owens and Hayes after 5?
A. Yes.

Q. Did you have any occasion to tell them that they should go home?
A. I thought they were a wee bit noisy and I thought they would be better in camp.

Q. And did you have occasion to get in touch with Military authorities so they would move?
A. I went along to ask for a truck to take them home about 6.10, I thought they would be safer home.

Q. Who did you find at the mill when you went over there?
A. Jack Barrett.

Q. Did you ask him to telephone?
A. I asked him to telephone, yes.

Q. Did you go with him?
A. I went with him, yes.

Q. When you left him, where did you leave him?
A. I walked back to where he was working at the scotch mill and came back through the path.

Q. Which path?
A. The short cut through the wood.

Q. Were Hayes and Owens at your place when you arrived back?
A. No.

Q. Did you speak to your father about Owens and Hayes or anyone else there?
A. Yes, he said they had disappeared.

Q. Did he say in which direction they had left?
A. I can't remember.

Q. Your father didn't express any surprise that you hadn't seen Owens and Hayes?
A. I can't think what he said.

Q. Were Miles and Cripps still in the bar?
A. Yes.

Q. Were you there when the car arrived to take them back?
A. Yes, I was there.

Q. Did anyone else from the mill have occasion to go over and ask any questions about any members of the C.F.C. at your place that evening?
A. No.

Q. No one asked where Barrett was?
A. Oh yes, Bill Goodrew

Q. And did he tell you any reason why he wanted to see him?
A. He told me there was damage done at the mill.

Q. After Goodrew was there, did you see Owens and Hayes again?
A. Yes, I was speaking to Owens at the top of the road.

Q. In what direction was he going?
A. He was walking towards the main road.

Q. He was quite normal.
A. Well, he appeared to be.

Q. Did you see Hayes about that time?
A. No, I didn't see him.

Q. Did you speak to Owens at that time?
A. Yes.

Q. Did you say very much to him?
A. No, I just asked him why he had run away, I suppose I was a wee bit annoyed with him.

Q. Did he appear to be limping when you saw him?
A. No, he didn't appear to be limping.

Q. You didn't notice whether his clothes were cut?
A. As a matter of fact, no.

Q. When you saw Owens last time, he was walking across the field?
A. Yes.

Q. I will show you a map, this plan marked "A", this is a blue print, will you take a look at it please. I will mark this "1" at the point where you saw Owens making for.
A. I was well up the road in front of the shop, marked "2". The point "3" is where I spoke to Owens.

Q. And he was going to the telephone kiosk marked on the map. Did you see Hayes when you were there?
A. No, I didn't see him.

Q. You didn't take the path which runs at the back of the Estate Carpenter's Shop, that is well known?
A. That's so.

Q. This plan marked "A.1", to the best of your belief and knowledge, is a copy of the blue print "A"?
A. Yes.

The accused declines to cross examine the witness.

.....
(Christina MacKenzie)

12th WITNESS

Donald MacKenzie, General Merchant, The Shop, Allarburn, Kiltarlity having been duly sworn, states:-

Q. You are a general merchant and proprietor of the shop "Allarburn"?
A. Yes, sir.

Q. On Tuesday 14th Sept. at about 3 o'clock, you returned from a funeral?
A. Yes, sir. That's true.

Q. Will you tell me what you did from that time on concerning Hayes and Owens who you see before you, and before you proceed, do you recognise them?
A. Yes, sir.

Q. And were they in your pub on Tuesday 14th Sept.?
A. Yes, sir. When I came home it was about ten minutes to 3 and they were all there. I gave them drinks until 3, then they went out and I locked up the place.

Q. At what time did you open the bar again?
A. Just after 5.

Q. Did you see Owens and Hayes again?
A. Yes, they all came to the door again at 5 o'clock when I opened.

Q. Who was with them, do you remember?
A. Bill Miles and another chap, I can't remember his name.

Q. Did you have any trouble with any of the four men?
A. They were just a wee bit rowdy.

Q. Did you instruct your daughter to notify the authorities to come.-
A. Yes, sir. The place is not too substantial and I didn't want the place damaged.

Q. The men were boisterous?
A. Only just among themselves, they were doing no harm, only rough among themselves.

Q. Sort of wrestling?
A. Yes.

Q. Did you see Owens and Hayes outside after you told your daughter to go?
A. Yes.

Q. Where did you see them?
A. They were out about 20 yds from the door.

Q. And what were they doing?
A. They were walking along the footpath out of my sight towards the mill.

Q. When your daughter came back had Owens and Hayes gone?
A. Yes.

Q. They went in the same direction as she left?
A. Yes, but of course I know nothing of what happened.

Q. Did you mention to your daughter that she might have seen them on her way back from telephoning?
A. I can't say.

Q. Did you express surprise that she did not see them on her return from the mill?
A. No.

Q. Were you present when the truck called and collected Cripps and Miles?
A. Yes.

Q. And did you see either Owens or Hayes later on in the evening?
A. Yes.

Q. Where did you see them?
A. I was out at the gate leading to the field opposite the door, and I saw Hayes pass along the path from the direction of the mill.

Q. Did you see Owens?
A. Yes, sir.

Q. Where was Owens?
A. Going through the field.

Q. In what direction?
A. Making for the main road.

Q. And was he limping?
A. He was a little lame.

Q. Did you notice any tear in his clothes or blood?
A. No.

Q. I will show you a plan, now please show me where you were standing?
A. I was standing at "4". Hayes was walking in the direction of the crooked line, and the arrowed line is the approx. course Owens took ending at "1".

Q. When you saw Owens going towards the road, he was a little lame?
A. Yes, he was a little lame.

Q. Both Hayes an Owens were proceeding by different routes and were coming from the direction of the mill?
A. They entered from the footpath.

Q. Could you give any idea of the time?
A. I never looked at the time, I would say about 7.30.

Q. Would you say that any time during the day Owens and Hayes were drunk?
A. No.

Q. You have been a public house keeper for a good number of years?
A. 6 Years.

Q. If a man were drunk, with your experience you would be able to tell?
A. Yes.

Q. In your opinion these men were not drunk?
A. No, no.

The accused declines to cross-examine the witness.

D. Mackenzie.....
(Donald Mackenzie)

13th WITNESS

G.48164 Pte. NEIL, A.W., No. 15 Coy C.F.C., having been duly sworn, states.

Q. Do you recognise these two men seated here?
A. Yes, sir.

Q. Could you give their names?
A. Ernie Owens and Joe Hayes.

Q. On the afternoon of Tuesday 14th Sept. were you at the home of the District Nurse, Mrs. McGregor?
A. I couldn't say as to the date.

Q. I will put it another way, were you at the District Nurse Home on the evening when Owens and Hayes arrived and Owens needed medical attention?
A. Yes, sir.

Q. About what time was it that they were there?
A. About 7, or half past, I couldn't say exactly.

Q. To the best of your knowledge, what conditon was Owens in, was he drunk or sober?
A. I couldn't say sir.

Q. Could you smell liquor on him?
A. I never noticed it at the time.

Q. Were you in the same room with him?
A. Yes, sir.

Q. You didn't smell liquor on either Owens or Hayes?
A. I never noticed it.

Q. Were you present at the occasion when the Nurse attended Owens?
A. Yes, sir.

Q. And did you ask Owens how he was hurt?
A. No, sir.

Q. Did you have any conversation with Owens at all?
A. I can't remember.

Q. Did you have any conversation with Hayes?
A. No, sir.

Q. Did you go to Lt. Murphy and tell him that Owens was badly hut and needed medical attention?
A. Yes, sir.

Q. Were you present when Owens or Hayes asked for the assistance of Dr. Leitch of Beauly?
A. No, sir.

Q. Is there anything further you can tell us concerning what took place that evening at the District Nurse's Home?
A. No, sir.

Q. Did you hear the District Nurse say that she did not think that Dr. Leitch should handle the case and that they should get an Army Doctor?
A. No, sir.

The Accused declines to cross-examine the witness.

(G.8164 Pte. Neil, A.W.)

14th WITNESS

G.48181 Pte. Walsh, J., No. 15 Coy C.F.C., having been duly sworn, states:-

Q. On Tuesday 14th Sept., did you accompany Lt. Murphy back to Kiltarlity Mill to do some work with Sgt. Blissard on the ressaw?
A. Yes, sir.

Q. On your arrival did you go directly upstairs to the top of the mill?
A. I went straight up.

Q. In the course of your duties, repairing the saw, did you make a lot of noise?
A. We were making a good bit.

Q. Did you hear any suspicious noise from the bottom floor?
A. No, sir.

Q. Did you see the belts which were damaged?
A. Yes, sir.

Q. Will you tell us in what manner you think these were damaged?
A. I couldn't say sir, they looked as if they were cut.

Q. Were they cut at the lacings, or others, or both?
A. They were cut in the middle, not at the lacings.

Q. Were they clean cuts?
A. I couldn't say sir, I didn't examine them.

Q. How long did you work in sawmills before joining the army?
A. About 15 years.

Q. In your experience of 15 years in sawmills would you say these were cut with a very sharp instrument?
A. They seemed to be cut clearly.

Q. Did you see the damage done to the mill engines that same afternoon?
A. Yes, sir.

Q. In your opinion was the damage to the mill engines and the belting accidental or deliberate?
A. It looked as if it was deliberate.

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Q. Did you see Owens and Hayes that evening?
A. No, sir.

Q. Did you see the mechanics who were supposed to be repairing the mill engines from the afternoon?
A. No, sir. I didn't.

Q. Did you see the vehicle of the General Workshops at the mill that evening?
A. After the damage was done, I saw it.

Q. Is that when S/Sgt. Savoie and the other mechanics came down to repair the damage.?
A. Yes, sir.

The accused declines to cross-examine the witness.

J. Walsh
.....
(C.48181 Pte. Walsh, J.)

15th WITNESS

C.48187 S/Sgt. Savoie, W.H., General Workshops, C.E.C., having been duly sworn, states:-

Q. You are the S/Sgt. in charge of the mechanics at No. 5 Dist. Workshops?
A. Yes, sir.

Q. On the evening of Tuesday 14th Sept. were you ordered by Mr. Peake to take mechanics and proceed to Kiltarlity?
A. Yes, sir.

Q. On your arrival, what damage did you find to the mill engines, can you just give roughly the number of engines?
A. 3 engines were out of commission.

Q. Would you say the damage had been accidental or deliberate?
A. Deliberate.

Q. Would an instrument such as a heavy wrench have had to be used?
A. On some parts of one engine a bar would have had to be used.

Q. What time did you start to repair these engines, approximately?
A. Approximately 8.45;

Q. What time did you finish with your mechanics, completely?
A. Approximately 11.30;

Q. How many mechanics did you have with you?
A. Six including myself.

Q. How long would it have taken two men to do the damage to these engines?
A. If it was done hurredly it could have been done in as little time as three or four minutes, 4 minutes I should say.

Q. Were all the damaged parts lying around or were they taken outside?
A. Some were outside, found later, others never found to date.

Q. Earlier in the afternoon had you occasion to send any of your men to Kiltarlity Mill on work?
A. Between 5.30 until 7 o'clock, I had two men.

Q. Who were these two?
A. Cpl. Bowker and Pte. Jones.

Q. Did you see them later on in the evening?
A. I didn't see Cpl. Bowker, I saw Jones.

Q. Was Jones one of the mechanics who went to the mill to do the repair work
A. No, sir. not one of the 5.

Q. Where did you see Jones later that evening?
A. At the workshop at a welding class.

Q. When he finished his repair work, he went back to carry on a class at 18?
A. Yes, sir.

Q. He had mentioned that the repair work was completed satisfactorily?
A. The repair work they went to do was not finished, it was to be finished the following morning, before the mill began.

Q. What was the repair job?
A. Repairing the change over valve from petrol to oil fuel, it was temporarily in running condition.

Q. Did you see Cpl. Bowker that night at all?
A. No, sir.

Q. Did you see him next morning?
A. Yes, sir.

Q. Did he inform you that everything was running satisfactorily when he left?
A. He informed me through Jones. He didn't re-appear that particular night, but the next morning he informed me that the engines were running then, although temporarily.

Q. The lights were running from what engine?
A. The Ruston Hornsby.

Q. This engine was found to be damaged when you arrived?
A. Yes, sir.

Q. And was not in running condition, or could it be started when you arrived?
A. It took about half an hour to start it.

The accused declines to cross-examine the witness

S/Sgt W.H. Savoie
(C.43187 S/Sgt. Savoie, W.H.)

16th WITNESS

Cpl. Bowker, J.V., K.98516, General Workshops, C.E.F., having been duly sworn, states:-

Q. Did you, accompanied by Pte. Jones, go to Kiltarlity Mill on the evening of Tuesday 14th Sept. for the purpose ~~fx~~ of repairing engines?
A. Yes, I went down, but I can't swear as to the date.

Q. Do you know the engineer at Kiltarlity Mill by the name of Brown?
A. Yes, sir.

Q. Was Brown running the lights at the time when you arrived?
A. Yes, sir.

Q. And the engine running the lights was the Ruston Hornsby?
A. Yes, sir.

Q. He left it running in order to provide lights for you when you took over?
A. Yes, sir.

Q. Did you notice the other two engines when you were there?
A. Yes, sir.

Q. Was one of these known as the U.D. 18, on which you were to do some minor adjustments?
A. Yes, sir.

Q. Was that engine when you left the mill in running repair?
A. Yes, sir.

Q. And was the other U.D. in running repair?
A. Yes, sir.

Q. When you completed your work, about what time would it be?
A. 6.15 or 6.20

Q. Did you shut the Ruston Hornsby engine off?
A. Yes, sir.

Q. By doing so, did you cut off the lights?
A. Yes, sir.

Q. Did you meet Miss McKenzie of the beer shop that evening at or around the mill?
A. I don't know if that's her name, but we met the girl from the pub. She was walking through the mill.

Q. Do you recognise these two men?
A. The one this side.

Q. Pte. Hayes. You know him by sight?
A. Sometimes I ride alongside him into Beauly.

Q. You did not see Hayes, or the other soldier sitting with him that evening at Kiltarlity Mill?
A. No, sir.

Q. It is therefore an established fact that when you left the mill, the engines were in running repair?
A. Yes, sir.

The accused declines to cross-examine the witness.

J. Bowker
(K8516 Cpl. Bowker, J.V.)

17th WITNESS

K72694 Pte. Jones, J.A., General Workshop, C.E.C., having been duly sworn, states:-

Q. Did you accompany Cpl. Bowker on the afternoon of Tuesday 14th Sept. to Kiltarlity Mill for the purpose of repairing a U.D.18?
A. I did, sir.

Q. Did you see Brown, the mill engineer, when you arrived?
A. Yes, sir.

Q. And did he hand over the engine running for the purpose of keeping on the lights so that you could work?
A. That's right sir.

Q. On completion of your repair work did you shut off the engine that was running the lights?
A. Yes, sir.

Q. That engine was in good running repair when you left it?
A. Yes, sir. When we shut it off it was.

Q. Did you see the other two engines before you left the mill?
A. We were working on one.

Q. The one you left was it ready to run in the morning?
A. Yes, in normal running condition.

Q. Did you see either of these two men here that evening?
A. No, sir.

Q. Do you know them?
A. No, sir. I don't know their names.

Q. Did you see Miss MacKenzie from the beer shop that evening at the mill?
A. I saw her going by the mill.

Q. Did you speak to her?
A. I said hello.

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Q. You knew her as the girl at the pub?
A. Yes.

Q. Do you know what she was doing?
A. No, she was just walking by.

Q. Did you see Miss McKenzie on your way out of the mill on completion of your work?
A. Yes, when we were leaving.

Q. Approximately what time was that?
A. About 6.30.

Q. Did you notice any belts cut or broken in the mill?
A. No, nothing at all.

The accused declines to cross-examine the witness.

J.A. Jones
.....
(K72694 Pte. Jones, J.A.)

18th WITNESS

Katie Ann Bain, Nurse, Raigmore Hospital, Inverness, having been duly sworn, states:-

Q. Were you on duty on Tuesday 14th September at about 10.15 P.M?
A. Yes, sir.

Q. Could you identify him?
A. The first one.

Q. Owens was suffering from a cut in his right side when admitted?
A. Yes, sir.

Q. Did you ask him how he came by that wound?
A. Yes.

Q. And what was his reply?
A. He thought he cut it with glass.

Q. He was in your opinion sober?
A. Yes.

Q. I will show you a pair of trousers. Are these the trousers you took from Owens and placed in the locker?
A. I didn't take much notice, a pair like that.

Q. Do you remember handing them over to D.S. Urquhart of the Inverness Police?
A. Yes.

Q. Are these the trousers and the seal that was on them?
A. That's the kind of seal that was used anyway.

Q. You signed a sealed label attached to the article?
A. Yes, sir.

Q. Is that your signature?
A. Yes, that's my signature.

The accused declines to cross examine the witness.

K.A. Bain
.....
(Katie Ann Bain)

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19th WITNESS

Dr. Gray, Sarah Kirkpatrick Ruth, Raigmore Hospital, Inverness, having been duly sworn, states:-

Q. Were you on duty in Ward 4 at approximately 10 p.m. on Tuesday 14th September?
A. Yes

Q. Could you identify Pte. Owens in this room?
A. Yes, the first man.

Q. Will you tell us the nature of his wound?
A. He was suffering from an incised wound of the right thigh 2½" long, and the muscle was involved at a lower level than the skin, a fairly deep wound, but I can't identify the exact muscles now.

Q. Did he appear to be sober?
A. Yes.

Q. Did you ask him how he came by the wound?
A. Yes.

Q. What was his reply?
A. He said he thought he had fallen and cut it.

Q. Did he seem willing to give this information or was he reticent about it?
A. He was rather reticent.

Q. Would you say this wound was caused by some sharp instrument?
A. I should say a sharp instrument.

Q. Could it have been cut by a broken bottle or piece of glass?
A. It could have been.

Q. In your experience, had the wound been of glass, would it not have been more jagged?
A. That would depend on the piece of glass, and how he came by it.

Q. You didn't see the clothes of the patient?
A. No, I can't remember seeing them.

Q. I s there anything further you could add, Doctor?
A. No, I don't think so.

The accused declines to cross-examine the witness.

Sarah K.R. Gray
.....
(Sarah Kirkpatrick Ruth Gray)

20th WITNESS

Detective Sergeant Urquhart, Gregor Calder, Inverness-shire, Constabulary, having been duly sworn, states:-

Q. You are a Detective Sergeant in the Inverness-shire Constabulary?
A. Yes, sir.

Q. You were called to investigate an accident which occurred at Kiltarlity Mill in the Canadian Forestry Corps at Kiltarlity, Inverness-shire on 14th September?
A. I was, sir.

Q. Were you called by Lt. Col. N.C. Ferguson, O.C., No. 5 District?
A. Yes.

Q. Were you accompanied by any person during your investigations?
A. By Constable McLean of Kirkhill.

Q. This is rather a long proceeding we have here, and I will ask you to tell in your own words what you did and the result of your investigations in this matter at Kilterlity Mill?

A. I called on Lt. Col. N.C. Ferguson and he handed me a knife, which I now produce sealed and signed by Lt. Col. Ferguson, Major McPhail and Pte. Brown. We proceeded to the mill where we saw Lt. Murphy, the mill officer, and he handed over to us some further productions in the case, these are pieces of belting, 1 piece of 6", piece of 4", 2 pieces of 12" and a number of pig skin leather lacings, all now produced, we marked all these articles and got Lt. Murphy and Sgt. Jewel to sign them. At the same time Mr. Peake handed to me two pieces of pipe line from No. 2 Engine and the feed pipe line of No. 1 Engine, he signed the labels which I attach. I myself found three ignation leads lying around in the engine room, now produced and identified by Lt. Peake as three of the ignition leads which were cut. We interviewed a number of witnesses and took statements from them, Pte. Brown, Miss. C. MacKenzie, Elizabeth White (Mrs. McGregor) Miss. K.A. Bain, that was at Raigmore, that was all I took that particular day. The following day the 18th, I took statements from Donald MacKenzie, at the shop, William Henry Savoie, Major McPhail, Gordon Maynard Jewel, Lieut. Murphy, William Herbert Miles, James Cripps, and that was the day I saw Hayes the accused and charged him with the offence.

Q. You stated on the 18th you saw the accused Hayes and charged him with the offence in the presence of his C.O. and Constable McLean, was that charge the result of your investigations?

A. Yes, sir.

Q. And did you feel reasonably sure that the result of your investigations compelled you in your duty as an Officer of the Crown to lay these charges?

A. Yes, I certainly did.

Q. How long have you been a Police Constable?

A. 20 Years.

Q. And you have been in charge of investigations in the Inverness-shire Constabulary for some time?

A. I have been a Detective Sergeant for the past two years and I have investigated all cases which occurred in my own beat since I joined the Police.

Q. In the exhibits which you have produced here we note that the belting is very cleanly cut. Would you say that this knife was sharp enough to have cut the clean cuts in that belting?

A. Yes, sir.

Q. This knife has been identified?

A. Yes, sir.

Q. By whom?

A. By Pte. Brown.

Q. And that is his signature as having identified the knife?

A. Yes, sir.

Q. This saw, did you see any evidence of any belting that was cut by a saw?

A. Yes, sir. I saw a belt in the mill which showed signs of attempts being made to cut it with a saw.

Q. Is that belt here?

A. No its in use in the mill, and I understand the saw was found almost immediately beneath the particular belt.

Q. This wiring that you have produced is identified by Mr. Peake as wiring from one of the engines in the mill?

A. Yes.

Q. And it shows evidence of having been pulled roughly out of the engine.

A. Probably cut with a knife.

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Q. Now please go on again.
A. Hayes was duly warned, cautioned and charged with the offence and he replied 'I have nothing to say, Sergeant'. Before then of course I had duly cautioned him that he was not obliged to say anything in answer to my question and I told him that whatever he might say might be used in evidence. I then asked him if he had anything further to add to his statement which he had already made at the Court Of Enquiry, and he informed me that he had nothing to add to that statement.

I asked him if he could tell us where Owens met with his injury, and he maintained that it was in the woods behind the beer shop. I asked him if he could point out the place to us, but he maintained that he was so much under the influence of drink that he could not remember the exact spot. He was quite definite about Owens coming by his injury in the woods behind the beershop.

Q. Did Hayes tell you what caused the wound?
A. He couldn't say definitely, he thought it was glass, but couldn't say what glass, whether a bottle or any other broken glass. He was asked if he could describe the glass, but he led me to understand he didn't see the glass himself.

Q. Was Hayes manner frank and aboveboard ingiving you this information, or was he concealing anything in your opinion?
A. I should say that he was concealing something.

Q. Please go on again.
A. On Monday the 20th I continued my enquiries at Kiltarlity Mill, and took statements from Pte. Stuart Brown and got him to identify the knife and he sealed the label which is attached to it. I also took statements from Charles Lawrence Reggin, Sgt. Raymond Arnold Parker, Major Kennedy and a further statement from Lt. Murphy. I also took statements from Major Robertson, Cpl. Bowker and Pte. Jones, I think that was all. Oh, then I took a statement from Dr. Gray at Raigmore.

Q. I will show you a sketch signed by yourself?
A. That is a rough sketch by me.

Q. I will show you a brown print sketch, which are true copies of thesketch?
A. They certainly appear very much similar, yes.

Q. Now go on again please.
A. On the 30th September, I saw the accused Owens at Raigmore Hospital when he was being discharged from there and in the presence of his C.O., I warned, cautioned and charged him with the offence. He replied "I never had nothing to do with wrecking that mill"
I might say here that I asked him if he could explain how he came by his injury and he told us that he fell on the road in front of the beer shop, he was quite definite about that. When asked what caused the cut, he was unable to say.

Q. You state that Owens told you he fell on the road in front of the pub?
A. Yes, sir.

Q. And you state that Hayes told you he fell in the woods at the rear of the pub?
A. Yes, sir.

Q. You state that Hayes said he was unable to say what cut Owens and Owens according to evidence taken today, said he was cut by glass and now you state he told you he was unable to say what was responsible for the cut on his leg?
A. That is so.

Q. In other words the two statements are conflicting?
A. Absolutely.

Q. Did you have this knife examined for fingerprints?
A. Yes, sir.

Q. And were there none on it?
A. There were no fingerprints on it.

Q. The belting we have in court here before us, roll of belting, there is a slit shown on the belting, showing evidence that the knife slipped, is it possible in your opinion that this was the cause of the wound to Owen's thigh?
Q. Yes, sir. it is quite possible.

Q. Did you obtain the clothing of Owens from Raigmore Hospital?
A. I did, sir.

Q. I will show you a pair of trousers with a cut in them, are these the trousers?
A. They are the trousers which were handed over to me by Nurse Bain.

Q. And in your years as ax Detective Sergeant would you say that they were cut by a sharp knife?
A. Yes, I would.

Q. From the position of the cut, would you say it was possible for the knife to have slipped and torn into the thigh of the wearer of these trousers?
A. Yes, sir.

Q. Have you any other information which would enlighten or assist us in any matter in arriving at a reasonable conclusion as to the cause of this wilful damage done at Kiltarlity mill on Tuesday September 14th. We defer to you with your many years of experience and ask if you could assist us in arriving at some conclusive result.
A. Yes, sir. I do feel reasonably sure on the strength of the evidence obtained by me.

Q. And on on the strength of this evidence you so charged them?
A. Yes, sir. I did.

Q. If the civil authorities wished they could proceed with this charge under the Defence of the Realm Act?
A. Yes, sir.

The Accused declines to cross-examine the witness.

.....
(G. Urquhart) Det. Sgt.

The two accused having been questioned stated that they wished to call no witnesses

---

Rule of Procedure No. 4 Para. C.D.E.&.F. have been complied with

---

By order of the Officer Commanding, No. 5 District, Canadian Forestry Corps, alll witnesses and the stenographer were sworn before giving evidence.

Taken down before me in the presence and hearing of accused at No. 15 Coy C.F.C., Kiltarlity, Inverness-shire, this 6th day of October, 1941.

(C.L. Kennedy) Major.

One clasp knife.
One piece 8" balatta belting.
One piece 4" balatta belting.
Two pieces 12" balatta belting.
Number of pieces pigskin leather lacing.
Hand saw.
Three pieces copper piping.
One 12" Corner drive balatta belt approx. 45' long.
One Khaki battledress blouse.
One pair Khaki trousers.
One Khaki shirt.
One woollen sommit
One pair leather gloves.
Plan of Kilterlity Mill area.
Finger Print form in respect of Pte. Joseph Lawrence MAHER.
Finger Print form in respect of Pte. Ernest Patrick CREEN.

LIST OF WITNESSES FOR THE PROSECUTION

LIEUT. G.C. MURPHY	NO. 15 COY C.P.C.
648173 SGT. PARKETT, R.	NO. 15 COY C.P.C.
649848 PTE. MYLES, W.H.	NO. 15 COY C.P.C.
648182 PTE. ARSENAULT: E.	NO. 15 COY C.P.C.
648186 PTE. STEWART, WM.	NO. 15 COY C.P.C.
G 8096 PTE. BARRETT: J.	NO. 15 COY C.P.C.
68267 PTE. GRIFFS, J.	NO. 15 COY C.P.C.
K72778 PTE. BROWN S.T.	NO. 15 COY C.P.C.
MAJOR D.A. MACNEIL	NO. 15 COY C.P.C.
MRS. ELIZABETH ROBERTSON	DISTRICT NURSE, KILTARLITY
MISS CHRISTINA MACKENZIE	THE CROFT, ALLANDUNN: KILTARLITY
DONALD MACKENZIE	THE CROFT, ALLANDUNN, KILTARLITY
648184 PTE MEIR, A.W.	NO. 15 COY C.P.C.
648181 PTE. WALSH, J.	NO. 15 COY C.P.C.
648187 S/SGT. LAVOIE, WM.	NO. 5 DIST. HQ INVERNESS C.P.C.
K98516 CPL. BOWKER, J.V.	NO. 5 DIST. HQ INVERNESS C.P.C.
K72694 PTE. JONES, J.A.	NO. 5 DIST. HQ INVERNESS C.P.C.
MISS KATIE ANN BAIN	RAIGMORE HOSPITAL, INVERNESS
DR. S.M.A. GRAY	RAIGMORE HOSPITAL, INVERNESS
DETECTIVE SGT. G.G. SERJEANT	INVERNESS-SHIRE CONSTABULARY THE CASTLE, INVERNESS.

ARMY FORM B.296 (WAR). 279

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).*
G 48037	Pte.	Owens E.P.	No. 15 Company, C.P.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, 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. One times.

For Disobedience-A.A. Sec. 9(2) One times.

For Conduct to the prejudice One times.

For _____ times.

Date of first entry in Field Conduct Sheet 31 Jan 1941

Date of last entry in Field Conduct Sheet 28 Nov. 1942

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 NO beginning on the N/A. day of _____

*Strike out if not applicable.

N

4. The accused has been awaiting trial on the present charges for nil. days in civil custody; and for 84. days in military custody, *i.e.*, nil. days in open arrest, 84. days in close arrest; of which 17. days were spent in hospital.

5. The present age of the accused is 23 yrs. 6 mths

6. The date of his attestation ~~calling up for military service~~ is 17 Aug 41.

7. The service which the accused is allowed to reckon is 3 yrs. 5 mths.

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, to the present date—

	Date of Promotion.
In the substantive rank of N/A	PTE.
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.*

(21114) Wt 8670/668 100,000 4/42 A.& E.W.Ltd. Gp.698 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.
		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 7th. day of December.

J. C. L. Atkins Lieut.
Officer i/c Records, No. 15 Coy. C.F.C.

No G.48037 Name OWENS, E.P. Sqn., Battery or Company # 15 Coy, Cdn Forestry Corps Date of enlistment 17/8/40 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. C.A. Williams 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
Quebec	31/1/41	Pte	-	A.W.L. 9 hours	CSM Mott, AE	5 days detn	2/2/41	Major C.A. Williams	Forfeits 1 dys pay
Inverness	28/11/42	Pte	-	WOAS (1) disobeying a lawful order given by a member of the Cdn Provost Corps in YMCA 2220 hrs 28 Nov 42 AA Sec 9(2). (2) conduct to the prejudice, etc, being in possession of alchholic beverages while on picquet duty in Inverness 2220 hrs 28 Nov 42. AA Sec 40	L/C. Forsey, W.J. L/C. Gough, G.	28 days detn	1/12/42	Lt.-col. N.C. Ferguson	Forfeits 28 dys pay

"O"

15 Oct 43

Certified true copy.

(J.C.L. Akin) Lt. & A/Adjt.,
No. 15 Company, CFC

SE-56

Sgt. Owens, N.H.

SCHEDULE.

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

Accused: B 38014 Sgt Harnold Wellington OWENS 11 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	A.A. 15(1)	GUILTY	GUILTY	
2nd	A.A. 11(alternative)	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 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 17 days, of which ~~nil~~ 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 21 days (twenty-one).

(Sgd) Judge Advocate, if any. 13 Mar 1945 Date awarded. (Sgd) C.O. Pinkham 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 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:

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) Brigadier (G S N Gostling)

Date 13. Mar 45 Commanding 2 Cdn Base Rft Group Confirming Officer.

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

Accused.	Date.	Signature of Offr.
B-38014 Sgt Owens H.W.	19 Mar 45	J.E. Pope Lt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 5E 52

FIELD GENERAL COURT-MARTIAL

CFA68 (To take place of AFA51) 40/P&B/1686 (1945)

4/38B

23 APR 1945 JAG BRANCH C.M.H.Q.

(Convened by Order of Brigadier G S N Gostling, ED Comd 2 CBRG dated 10 Mar 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 (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/Appmt.	Full Christian Names.	Surname.	Unit
B 38014	Sgt	Harnold Wellington	OWENS	11 CBR Bn

PROCEEDINGS REVIEWED 2 Cdn Base Rft Group

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

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date) 13. 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 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 1330 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 (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	Major	~~C.V. PINKHAM~~ ~~P.S. COLES~~	RCA(M) ~~RCA~~ A-Dist 3 Cdn NETD
Member	CAPTAIN	D.F. McJANNET	REAIC 9 CBR Bn
Member	LIEUT	L. LAPRADE	C.I.C. 10 CBR Bn
Judge-Advocate			
Prosecutor	LIEUT	J.M.A. LALONDE	C.I.C. 10 C.B.R. Bn
Defending Offr	LIEUT	H.W. LAWRENCE	C.I.C. 11 C.B.R. 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 (B) and fn 2 were not followed. See DI p 38.)

A8. The accused B 38014 Harnold Wellington OWENS 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 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 RP 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 B7E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG Wds P.17

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) and 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) (does) (do) 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 to be 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 hole 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(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(1). 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 Yes. - one witness as to character.

(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) 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 (1) they purport to be signed in the manner required by AA 163(l) (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 Ex B and Ex C respectively.(2)

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

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 557)
(ONHQ CL 173)

I certify that I have this day examined [illegible]
(No.)

[illegible]
(Rank) (Name) and in my opinion he is

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

Station [illegible]

Date [illegible]

Medical Officer (Sd)

[illegible]
(Unit)

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 557)
(CMHQ CL 173)

I certify that I have this day examined B38014
(No.)

Sgt. OWENS, H.W. and in my opinion he is
(Rank) (Name)

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

Station Field

Date 13MAR45

J Amadsonnick Capt (S gd)
Medical Officer

11 CBR Bn
(Unit)

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PA8/1697 (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 Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 38014	Sgt		Harnold Wellington	OWENS	11 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*) 10 Mar 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 V PINKHAM	RHC X-9 List 3 Cdn NETD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt or Lt	to be detailed by OC 9 CBR Bn	9 CBR Bn
Lt	to be detailed by OC 10 CBR Bn	10 CBR Bn

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.*)
(G S W Gostling)
Commanding 2 Cdn Base Rft Gp
Convening Officer.

Brigadier (*Rank.*)

Date 10 Mar 45

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

CHARGE SHEET

The accused B38014 Sgt Harnold, Wellington, OWENS, (CIC) 54 Coy 11 CBR BN a soldier of the Cdn Army Overseas is charged with

FIRST CHARGE "WHEN ON ACTIVE SERVICE ABSENCE WITHOUT LEAVE"
AA SEC 15(1)

in that he,

in the Field on 25 Feb 45 did absent himself without leave from 2300 hrs 25 Feb 45 until 0635 hrs 26 Feb 45.

(Total time absent : 7 hrs 35 mins)

SECOND CHARGE "WHEN ON ACTIVE SERVICE NEGLECTING TO OBEY REGT'L ORDERS"
AA SEC 11
(ALTERNATIVE)

in that he,

in the Field, on 25 Feb 45 was out after Curfew contrary to Pt I Order No 129 ~~and No 126~~ D/20 Feb 45.

In the Field,
5 Mar 45

(R.G. YOUNG) Lt-col,
COMD, 11 CBR BN

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(G S N Costling) Brigadier
Commander
2 Canadian Base Reinforcement Group

In the Field
10 Mar 45

Character Witness for B38014 Sgt H.W. Owens.

Capt R.W. Kelly of 11 CBR Bn having been duly sworn states:

In connection with Sgt Owens I have known him since I took over the Cy in November 1944 Sgt Owens has had a long service since July 1940, has been with his unit in the field, wounded, evacuated, recategorized and sent to a L of C unit. During his time with me and under my command he has been used as a Draft Sgt until Jan 1945 when I appointed him as a/CSM. We were extremely busy at that time and Sgt Owens took over the Job, worked extremely hard and carried an extra heavy load. While under my command I have found him to be a very conscientious worker and very reliable. During all this time he has never been up for an disciplinary action and to the best of my knowledge this is the first occasion in his Army career.

[signature]

B38014 Sgt. H.W. Owens 54 Coy

Plea for mitigation of Punishment

1. The accused has had over 4½ yrs service in the army, serving most of the time overseas. The accused served for 6 months in Canada, and 6 months in England in reinforcement units. He joined the Royal Hamilton L.I. and he served with them in England rising to the rank of sgt. On July 6 1944 he landed in Normandy with his unit and was in action until first week of Aug. 1944 at which time he was injured from shell blast for which he was in hospital in Normandy for about 7 weeks. He was given cat. S3 and reallocated to serve as instructor in 54 Coy, 11 Bn. 2.C.B.R.D. + for the last 2 months has been acting C.S.M. of the coy.
During his entire service he has given good service on all his units and to his country.

2. The accused is supporting his mother financially from his own pay. His mother is not well and not able to earn sufficient to keep herself. The accused has not been able to obtain dependents allowance for his mother + she depends on what he assigns to her to live.

3. Up until Feb. 26 no reports had been completed and filed in 54 Coy.

and no attempt had been made to check those absent in the evenings. An order ~~Regulation~~ was published, but no efforts were made to see that it was enforced.

4. N.C.O.'s of 10 Bn. charged at the same time as the accused for the same offences, were dismissed with a reprimand ~~by their C.O.~~ and one day's pay by their C.O.

In presenting the above considerations sir, I make a most sincere plea for mitigation of punishment for the accused.

H. W. Lawrance/Sh
Defending Officer.

Ex 'A'

SUMMARY OF EVIDENCE

In the case of B38014 Sgt Harnold, Wellington, OWENS, (CIC) 54 Coy 11 CBR BN, a soldier of the Cdn Army Overseas is charged with absence without leave and neglecting to obey Regt'l Orders.

By directionof the Commanding Officer the evidence is taken on oath.

FIRST WITNESS

H39536 L/Cpl Schiebelbein, J. duly sworn, states:

"On the 25 Feb 45 I was in charge of the Regt'l Guard on the Main Gate. After 2230 hrs no unauthorized person will leave barracks without a pass with the exception of Sgts and Officers who are allowed out until 2300 hrs. Sgt Owens' name was not turned in to me on the morning of Feb 26 1945." as pass-ingout Main Gate."

.....
(H39536 L/Cpl Schiebelbein, J.)

The accused does not wish to cross-examine the witness.

(RP 83(b) has been complied with)

SECOND WITNESS

Lieut O.J. Tancock being duly sworn, states:

"On the night of 25-26 Feb 45 I was Bn Orderly-Officer 11 Bn CBR to check all ranks coming through the main gate after 0600 hrs 26 Feb 45. Sgt Owens reported to me at 0635 hrs 26 Feb 45. I checked his pay book for rank and number."

.....
(Lieut O.J. Tancock)

The accused declines to cross-examine the witness.

(RP 83(b) has been complied with)

THIRD WITNESS

Lieut E.J. Lacina duly sworn, states:

"I am acting Coy Comd 54 Coy 11 CBR BN. On 20 Feb 45 Sgt Owens was acting as Coy Sgt Major and continued in this capacity until 25 Feb 45."

.....
(E.J. Lacina) Lieut

The accused declines to cross-examine the witness.

DOCUMENTARY EVIDENCE

A Certified True Copy of Unit Part I Orders No 129 and 130 extracted from Unit Part I Orders published on 20 Feb 45 has been read to accused signed by me and attached hereto as exhibit "A"

J.A. Gingell
.....
(J.A. Gingell) Lt

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 may give will be taken down in writing and may be given in evidence."

The accused does not wish to make any statement.

The accused does not call any witness.

I CERTIFY THAT THE FOREGOING SUMMARY OF EVIDENCE, CONSISTING OF TWO (2) PAGES, WAS TAKEN DOWN BY ME IN THE PRESENCE AND HEARING OF THE ACCUSED AND THAT RP 4(c)(d)(e)(f) AND (g) HAVE BEEN COMPLIED WITH

J.A. Gingell
.....
(J.A. Gingell) Lieut,
Officer detailed to take
SUMMARY OF EVIDENCE

In the Field,
5 Mar 45

PART I ORDERS
Issued by
LT-COL R.G. YOUNG
Commanding Officer
11 CBR Bn

LAST ORDER NO 1[illegible]
[illegible]

THIS ORDER NOS
12[illegible] to 148
[illegible]

129. DISCIPLINE - CURFEW - GHENT

1. Curfew in the City of GHENT is at 2300 hours daily.

2. The effect of "Curfew" is that NO soldier, Offr or OR, will be in the streets during the hours of darkness after 2300 hours each day except ONLY in the following circumstances:-

(a) On duty - must be bona fide duty - not merely an excuse.

(b) In possession of a WRITTEN PASS of PERMISSION in writing signed by the CO (or OC) of his unit. This written "pass" must state the address at which the offr or OR is authorized to visit and the time by which he is to be back in barracks or billet. Such passes will be given sparingly and normally to cover attendance at some organized function. Under NO circumstances will such passes be granted for later than 0200 hours.

(c) NEVER at any time will any pass authorize any offr or OR to be present in a cafe or similar place after 2300 hours.

3. This order is further restricted, as far as ORs are concerned, by other orders regarding the time set for "tattoo".

4. This order applies to ALL RANKS of all units under comd of HQ incl those units in the area which are under comd for local adm. It also applies to ALL personnel of/or attached to HQ 2 Cdn Base Rft Gp.

5. Strict disciplinary action will follow any failure to obey this order.

NOTE WELL - "Curfew requires that individuals be actually OFF the street by the time set - NOT starting for "home" at that time."

130. DISCIPLINE - PASSES

1. NO soldier below the rank of Sgt will be outside his barracks between "Tattoo" and "Reveille" unless in possession of a written pass signed by an offr and bearing his Bn Orderly Room stamp. If such pass is to be valid after "Curfew" it must be in accordance with order in effect governing the matter of "Curfew".

2. Subject to unit arrangements, Sgts may be out between "Tattoo" and "Curfew" without a pass.

(Sgd) (R.G. YOUNG) Lt-col,
COMD, 11 CBR Bn

THIS IS A CERTIFIED TRUE COPY OF PART I ORDERS NOS 129 and 130
PUBLISHED 20 Feb 45

EXHIBIT "A"

J. Gingell Lieut.
Officer detailed to take
SUMMARY OF EVIDENCE

4 'B'

M.F.B. 355
223M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 200

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B38014	Sgt.	Owens, H.W.	(FE 11 CBRBn)

1. The following is a fair and true summary of the entries in the ~~Conduct sheets~~ Service and General 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 ~~Air Force Act~~ 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 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 dispensations with trial under A.A. 75 are set out in the Schedule annexed to this statement.~~ A.F.A. 75

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 Nil days in ~~Air Force~~ military custody, making a total of Nil days in custody, of which Nil days were spent in hospital. (OPEN ARREST) 17 days

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

6. The date of his ~~commission~~ attestation specified in his record of service attestation paper is 3 July 40

7. The service which the accused is allowed to reckon towards discharge is 4 Years 8 Months

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 (or is in possession of or entitled to). State any ~~air force~~ military decoration or reward. CVSM & CLASP

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 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:—

..... 15 Oct 43 ..... Date of promotion.

In the rank of L/Cpl. 1 Month ..... years.

In the rank of Cpl. 1 Year ..... years.

In the rank of Sgt. 1 Year 5 Months ..... 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 ..... 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

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 13th day of March 5. Dr Stewart Capt Adjt 11 Cdn Bn

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.

No B38014 Name Owens, H.W. Sqn, Battery, or Company R C P Corps CIC Date of enlistment 3-7-40 GC Badges Service or Proficiency Pay MFM 6 (AFB 122) 40/T&S/138 (3428)

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
Old sheet destroyed on reaching the confirmed rank of Sgt. wef 16 Jan 44									
				CERTIFIED TRUE COPY OF THE REGT DOCUMENTS IN MY POSSESSION			D.L. Stewart (D.L. STEWART) CAPT & ADJT 11 CBRBN		

(PTO)

7 Mar 45
(DATE)

B 38014 Sgt OWENS, H W.
(RANK AND NAME)

1. I hereby acknowledge receipt of one copy of Charge Sheet and one copy of the Summary of Evidence delivered to me

8 Mar 45
(DATE)

2. (a). I request that NOT AVAILABLE Lieut G B Epstein
(RANK AND NAME)
if available, be appointed. OR

(b). I request that an officer be appointed as my Defending Officer at my trial by Court Martial.

(Delete either (a) or (b)

(SIGNED) H. W. Owens

I hereby certify that Lt. H.D. LAWRANCE was appointed to
(RANK AND NAME)
defend B 38014 Sgt. OWENS H.W. at his forthcoming
(No Rank and Name of ACCUSED)
trial by Court Martial and that the said
Lt. H.D. Lawrance, was notified that
(RANK AND NAME OF DEFENDING OFFICER)
he was Defending Officer on 8 Mar 45.
(DATE)

D. J. Stewart Capt.
(ADJUTANT)

REQUEST FOR DEFENDING OFFICER

I wish to have Lieut G.A. Epstein (Scottish Regt) (CDN) ~~to~~ defend me at my trial

.....
(B36014 Sgt Owens, H.W.)

LIST OF WITNESSES

PROSECUTION:

H39536 L/Cpl Schiebelbein, J.

Lieut O.J. Tancock
Lieut E.J. Lacina

DEFENCE: NIL

LIST OF EXHIBIT

"A" Unit Part I Orders No 129 and 130 d/20 Feb 45.

4F-120
Pt. Ower J A

SCHEDULE.

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

Accused: No D127333 Pte. John Arthur OWEN

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 18(4)	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 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:~~

(Sgd) H.N.E. Curry Major 14 Nov 44 (Sgd) W.E. Short 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~~ DM

Noted

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

(Sgd) D Bowmont

Date 18 Nov 44

Commanding Comd R.C.A.S. Confirming Offr. Lt-Col Comps Tps

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

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 2 DEC 1944 JAG BRANCH CMHQ

RECORDED AT CMHQ IN AB 160. HF-120

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3) 40-P&S-1608 (2864)

Convened by Order of Lt-Col G.D. Ross-Smith Comd RCASC 2 Cdn C Tps dated 12 Nov 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 conferred 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.
D127333	Pte	John Arthur	OWEN	2 Cdn MAC RCASC

PROCEEDINGS REVIEWED
J.H. Campbell Major
REVIEWER, JAG BRANCH, C.M.H.Q.
2 Dec 44

PROCEEDINGS REVIEWED Date 3 JAN 1945 Army Branch

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 14 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. B/27

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 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 1015 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 Pte Descarie NK as interpreter? Ans No

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 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	Major	H.E. SHORT	HQ RCASC 2 Cdn C Tps
Member	Capt	J.B.S. McELHINEY	HQ RCASC 2 Cdn C Tps
Member	Lieut	H.E. KELLY	HQ RCASC 2 Cdn C Tps
Judge-Advocate	Major	H.N.E. CURRY	Gen List attd Cdn Sec 1 Sch
Prosecutor	Lieut	R.L. MAINGUY	2 Cdn MAC RCASC
Defending Offr	Capt	E.J. MORAN	2 Cdn MAC RCASC

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 33.)

A8. The accused before arraignment make(s) (no) ~~not~~ 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.(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(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 .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) (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 Yes to give evidence ..... Do you intend to call witnesses on your behalf ?
Ans Yes to ..... 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 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 195. 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)
(1. *RP 44(A).*)

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.(1)
(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.*)

D10. 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 585. 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(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 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 45. As to sentences see AA 44, 136, 182, RP 46-50, 69, 118, 119(A), KR Can 306, 330, 563-566, Overseas RO 309, 2323, RP 45. 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, D.127333 pte John Arthur OWEN, 2 Cdn MAC RCASC, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Army Act
Sec 18(4)

WHEN ON ACTIVE SERVICE STEALING PUBLIC PROPERTY

in that he

in the Field, at approximately 1730 hours 29 Oct 44, stole 3 tins of bacon, 1 tin of margarine and a quantity of rice which he gave to a civilian in exchange for 1 bottle of cognac, some eggs and tomatoes.

31 Oct 44

(D.C. Shaw) Major
O C 2 Cdn MAC

approved pursuant to K R (Can) 540 and 95 R O ~~2223~~ 4756(13) [illegible] major
11 Nov 44

To be tried by Field General Court Martial.

12 Nov 44

(G D Ross-Smith) Lt-Col
Comd RCASC 2 Cdn C Tps

Short - orig.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAM/1697 (2563)

(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-127333	Private		John Arthur	OWEN	2 Cdn MAC 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*) 12 Nov 44 endorsed by me, ~~(or by an offr of my staff for me)~~, who 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	H E Short		HQ RCASC 2 Cdn C Tps

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	J B S McElhiney		HQ RCASC 2 Cdn C Tps
Lt	H E Kelly		HQ RCASC 2 Cdn C Tps

WAITING MEMBER.

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

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Maj	H N E Curry		Gen List att Cdn Sec 1 Ech

On Active Service in the Fd

in HOLLAND (*Country.*)

(*Signed personally. RP 105 fn 2.*) Lt-Col (*Rank.*)

(G D Ross-Smith)

Date 12 Nov 44

Commanding RCASC 2 Cdn C Tps

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

RC

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(*C*)), any objections (*RP* 95(*B*)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the pars in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 60(*C*), 87(*C*), 92(*C*) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(*C*).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(*C*), 92(*C*) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(*E*), *KR Can* 593(a).)

(vii) Summing up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 557.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can* 560. *As to certified copies of regimental books see AA* 163 (1) (*g*) (*h*).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(9), *RP* 118(*C*), *MML p* 759.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

I certify that I have this morning examined D.127333 pte OWEN, J.A. of 2 Cdn MAC RCASC and in my opinion he is fit/~~unfit~~ to undergo trial by court-martial.

Field

1H Cdn Inf Bde

Medical Officer

In the case of No. D127333 Pte John Arthur OWEN.

D3 Evidence for the Prosecution. D3

(69)

First Witness for the Prosecution

No. A57971 Sgt C.H. Finnen, 2 Cdn MAC.

RCASC having been duly sworn states:—

Number, name and unit as above stated.

About 1730 hrs 29 Oct 44 as a result of what I was told by 4 Sgt Zarillo I went to the front gate of the farmyard where we were bivouced to stop any civilians leaving the area. Sgt Zarillo joined me at the gate. Approximately 1830 hours Mrs. D'Hondt a civilian was leaving the camp area. I stopped her and asked what she had in the handbag she was carrying. She allowed me to look in the bag and I found in it three tins of bacon, one tin of margarine and some loose rice in the bottom of the bag. I asked her where she got these and who gave them to her and as a result of what she told me I sent for Pte Owen who is a cook's helper in the kitchen and the two cooks. In the presence of Pte Owen she pointed him out and said that it was with him she had been dealing. She said in his presence that she had exchanged a bottle of cognac for the three tins of bacon, one tin of marg and the rice. She did not mention at the time having exchanged anything else for the articles. I took the articles from her and allowed her to go on her way. I went to the kitchen with Sgt Zarillo in search of the cognac and found the bottle of cognac in among three bad rolls in a corner of the lean to of the kitchen. I know Pte Owen and recognize him as the accused. The next morning Mrs. D'Hondt came to the sergeants' tent but I did not hear the conversation. I produce the articles I found in the bag. A tin of margarine marked "Margarine TB 2 lbs NETT July 1944". Tin of margarine marked Exhibit "A". Three tins of bacon. One tin of bacon marked

TC

(10) "Bacon. 18 oz NETT Contractor No. 10 H Contract No 723."
marked Exhibit "B"
One tin of bacon marked "Bacon 18 oz NETT 6.0. 1247
PKD 4/44" marked Exhibit "C"
One tin of bacon marked "Bacon 18 oz NETT Contractor No 10 H
Contract No 723" marked Exhibit "D"
I recognize these tins as the usual government issue
to the cookhouse.
I produce the bottle of cognac I found. It is labelled
"Fine Extra. Welvaart. Bien Être. Merxem"
Bottle marked Exhibit "E"

Cross-exam - My duties in "A" Platoon are transport
sergeant. I am the senior sergeant in the platoon.
It is permitted in A Pn to trade WD rations under
the supervision of a senior NCO. Certain commodities
only of which we have an excess. I believe an order
came from Coy HQ that we could trade stew and
things we had an excess of for fresh vegetables.
I have traded WD rations myself. Civilians were
permitted in the lines under the circumstances we
were then in as we were in a private farm yard.
I had seen Mrs. D'Houdt before in the camp area in
the farm yard. I never saw her making any trades
at the kitchen. A civilian coming in to trade rations
would go to the cookhouse where the cook was
instructed to contact a senior NCO

✓ ~~Re-exam - The exact order given to the cook was~~

Re-exam - None

Exam by Court: I think I can produce the order.
The witness retires to search for the order and on
returning states:
I was unable to find the order but in my own mind
I feel that I have seen such an order somewhere.
Cross-exam with leave of the Court:
The witness identifies Daily Part I Orders issued by
Major D C Shaw Officer Commanding 2 Motor Ambulance
Convoy dated 31 Jul 44. No 15 of which reads as follows:

15. Purchasing - Bartering

No articles of any kind, nor food or drink, are allowed to be purchased or obtained by barter"

But states that he does not remember this order.

The order I have been referring to was not a Part I order but I think I can remember a memo I figured came from Coy HQ. I don't remember who signed it.

RP 83 (B) complied with

The Prosecutor files a certified true copy of the unit order which is marked Exhibit F.

Second Witness for the Prosecution

D 123066 L/Sgt N. Zarrillo & Cdn MAC RCASC having been duly sworn states:—

Number name and unit as above stated.

About 1730 hrs 29 Oct 44 I was coming from the latrine when I saw a civilian woman leaving the kitchen lorry. She was not using the usual pathway and this aroused my suspicions. She had a handbag which was bulged. Before I could reach her she went into a farm house which was in the lines. She seemed to be trying to hide the handbag and this also aroused my suspicions. I went to Sgt Fuman and had him stand guard at the gate so that the woman could not leave. I then notified Lieut Baigly the platoon Officer. Myself and Sgt Fuman then took turns waiting at the gate. Approx 1800 hrs we saw the woman coming. At the gate we asked to look in her handbag. She turned the handbag over to Sgt Fuman and we found three cans of bacon, a can of margarine and some loose rice in the bottom of the bag.

The witness identifies Exhibits A B C + D as the bacon and margarine referred to.

We sent for an interpreter. As a result of what she said we sent for the two cooks and Pte Owen who worked in the kitchen, the woman identified Pte Owen as the soldier who gave her the rations

(12)

for a bottle of cognac. In the presence of Pte Owen we asked her if she had given Pte Owen anything else and she said "No just the cognac". We took her name and address and allowed her to leave after taking from her the commodities. We then went to the kitchen with Pte Owen and found the bottle of cognac hidden under some blankets. I identify Exhibit E as the bottle of cognac. I then told Pte Owen that he was under arrest for trading rations. The woman returned the next morning to get the bottle of cognac back but I would not give it to her.

Cross Exam. - I am administration sergeant of A Platoon. I take care of the office work, rations, POM, Et is permissible in A Platoon to trade rations but only through a senior NCO. I have never myself traded rations but I have supervised the trading of rations. I don't remember ever having seen this woman in the camp before. I had authority through my platoon officer to trade rations. Any senior NCO in the platoon could supervise the trade but the cooks could not trade rations on their own. I had frequently seen civilians carrying parcels and handbags in this platoon lines. I was suspicious of this woman because she was walking from the lorry not on the usual path but on the opposite side and was obviously trying to hide the handbag. I did not see the woman enter the platoon lines. I have no knowledge that the accused ever traded rations before. Pte Owen takes his orders from the cooks.

Re. exam - None

Exam by the Court - The only authority we had for trading rations was verbal by the platoon commander.

RP 83(B) Complied with.

EC

(13)

Third Witness for the Prosecution. Mme. Madeleine D'HONDT, residing at 7 Avenue de Steenweg, Zelzate, Belgium, having been duly sworn, states:

Name and address as above stated. I am a housewife. About 5 o'clock 29 October I went to the army kitchen and saw Pte Owen whom I know and whom I now recognize. I gave him my bag and asked him for some cheese for my children. I indicated by signs that he was to have the contents of the bag in return for the cheese. I had in the bag a small bottle of cognac covered with ten or twelve eggs and about four pounds of tomatoes. Pte Owen took the bag and went into the pantry. He returned with the bag with something in it and gave it to me. I did not at this time look in the bag. I went to the farm house for my milk. I stayed there for a little while and then went out to the gate where two soldiers stopped me. They opened the bag and took out the tins. They left some rice in the bottom of the bag. They sent for Pte Owen whom I then identified as the soldier who had given me what was in the bag. They then allowed me to go home. I cannot identify the actual tins Exhibits A B C + D but what the soldiers took out of the bag were tins similar to those. I identify the bottle of cognac Exhibit E as that which was in my bag when I gave it to Pte Owen. After I got to the sergeant I think I told the sergeant at the gate what was in the bag when I gave it to Pte Owen. I was nervous and do not remember exactly. I returned to the camp the next morning, went to get my milk and then went to the sergeants' tent to see if I could

EC

get the tins back. I didn't ask them anything else.

Cross. exam - I came into the platoon lines every two days to get my milk. This was the first time I ever went to the kitchen. I had known Pte Owen possibly for about a month. He could not have known what was in the bag when I gave it to him. Pte Owen did not ask me what the bottle was for.

Re. exam - My daughter was at ~~the~~ home from school on Sunday and took a bottle of milk with her. Therefore I had to go back to the farm house on the following morning.

By the Court - I didn't look in the bag when I got it back. I knew I had something in the bag. I thought it was cheese. The bottle of cognac was a gift. The eggs and tomatoes were also a gift. It was all together. I wanted cheese as it cannot be bought.

RP 83(B) complied with.

Fourth Witness for the Prosecution

Lieut L.M. Bayly, 2 MAC RE ASC. having been duly sworn states:-

I am platoon officer of A Platoon. Back in France we started to exchange surplus and captured tinned food for fresh produce. I am under the impression that I have seen an order permitting this. My instructions to my platoon were that only my three sergeants were permitted to trade food stuffs and that only german foodstuffs and bully beef and stew of which we had a surplus were to be traded for fresh food. There was nothing else which it was permitted to trade. It was definitely understood that any such trading must be for the benefit of the entire platoon.

Cross-exam - None.

AC Exam. by Court - I now know that I am a Lieut

but up until a week or so ago I had really thought that there was an order allowing barter.

RP 83(B) complied with.

D4

D4

The Defending Officer addresses the Court on his submission that the Prosecution has not established a prima facie case.

on the grounds that

1) that the trading of rations in A Pn was permitted by the Platoon Officer.

2) that accused did not know what he was receiving in return.

3) that guilty intent to commit theft has not been shown.

The Prosecutor does not reply.

A.C.

D6

Evidence for the Defence.

First Witness for the Defence. No. B62733 Pte W. L. Schiffer. 2 Can MAC RCASC, having been duly sworn states.

I am the cook in charge of the kitchen in A Platoon. The accused's duties are general fatigues all around the kitchen. On 29 Oct 44 I knew nothing about it until Sgt Zanelli came to the kitchen and took me up to the gate. The other cook and I were there and the accused was there and the woman. The sergeant asked which of us traded the goods for cognac. The woman identified the accused as the one. We went off to the kitchen and the sergeant found the bottle I don't know where. I had never seen it before. I didn't see the lady before and don't know her but I remember the accused telling me in the kitchen that there was a lady here wanting to trade tomatoes and eggs. I said "sure go ahead". I was busy cleaning a burner and did not pay much attention. ~~[illegible]~~ About three weeks ago Lieut Bayly told me with Sgt Zanelli that we were not to exchange food any more unless there was a senior NCO present to supervise the trade. A couple of days later a lady came with some celery. The accused ~~[illegible]~~ went for Sgt Zanelli and he came down and he approved of the celery trade. ~~[illegible]~~ He then told me personally that it would be all right to exchange for food but not for drink. Since then I have been in charge of trading food but usually I was pretty busy and gave the accused permission to exchange. The accused has never to my knowledge traded anything

TC

(18)

without my permission but he might have if I didn't happen to be around. If I was there he always asked me first. I never saw the accused change rations for cognac.

Cross Exam — When Mr Bayley saw me he said we were not to trade certain goods including coffee, sugar, jam and butter. He did not give me permission at any time to make any trade except under the supervision of a senior NCO. I did not have permission to appoint anyone else to do trading for me. There was only permission to trade food for food and not for drink. It would be impossible to empty the bag without knowing the contents.

Re-exam - None.

Exam by the Court - The accused did not mention what he had received from the lady in return and I knew nothing about the cognac until it was found. A dozen eggs might be worth three tins of bacon. I would never exchange margarine as we only get a small amount - just sufficient

RP 83(B) Complied with.

Second Witness For the Defence. No. B 86102 Pte RH Scott. 2 Cdn MAC RCASC having been duly sworn states:

Number, name and unit as above. Cook for Officers' mess for about the past month. Before that was a cook with A Platoon. While I was there the trading of WD rations was allowed. The accused was employed in the kitchen looking after the rations when they came in and tidying up. While with A Platoon I traded food. I never saw the accused make any trades. He always came to me.

I did not have control of trading rations. This was for a sergeant or corporal. I did not always go to a sergeant or corporal before selling a trade. The accused was in charge of the canned rations. He never brought down any rations unless told to by myself or the others ever. I never saw the accused with a bottle of cognac. I never saw the accused take a drink of cognac.

Cross-exam - most rations I ever drew was about 60 rations. I had a good supply issued up. I was not given any authority to trade myself. I always went to the sergeant. The food to be traded was kept by the cook's judgment. All I traded was stew. I always kept the keys to the reserve rations around my neck.

Re-exam - None.

By the Court - I would not trade bacon at all but if I did I think two tins for a dozen eggs would be fair.

Third Witness for the Defence

No M10689 Pte A. Condie.
2 Can M&C REASC having been duly sworn states:

Number, name and unit as above. Cook at A Platoon. 24 Dec in the evening I was told there was a friend at the gate to see me. While I was adjusting my hat the accused was in the cook truck and shouted to Scheffer that there was a lady there with eggs and tomatoes to trade and was it all right. Scheffer was cleaning the burner but shouted back sure to go ahead. As I passed the tail gate of the truck the accused asked me to hold a bag while he jumped on the tail gate. I did and then gave the bag back to him. I then went down to the

EC

gate and talked to my friend. I was returning to the kitchen when I saw a lady and a younger one standing with bicycles. I never saw the accused make any trades without getting permission from a cook. I have seen the accused take a drink of beer but ~~I have not~~ I have never seen him with a bottle of cognac.

Cross exam - None.

Exam by Court — I would not trade margarine for any consideration. I might go as high as three tins of bacon for a dozen eggs.

RP 83(B) complied with.

"Fourth Witness for the Defence" No. D 17/333 Pte J. A. Crean, 2 Can MAC RCASC having been duly sworn states -

I am the accused. About 1100 hrs 29 Dec a woman came up to the back of the lorry and said she wanted to trade. I asked what she had - she said eggs and tomatoes. I asked Schaffer by yelling at him if he wanted me to trade. He said yes. He Condie was just passing the back of the lorry. I asked him to hold the ~~lorry~~ bag while I climbed up. I did not know at that time that the cognac was in the bottom of the bag. I climbed in and took the bag from Condie I emptied the eggs into a box and the tomatoes on the floor and then discovered the cognac. I filled up the bag with three cans of bacon and what I thought was cheese - it was on the wrap shelf. I had placed the bottle of cognac on the floor. As I was climbing down the back I said to the woman what about the cognac no trade for cognac. She said the cognac for you and I understood that it was a present for me as I know the woman very well.

OC

I handed her the bag and she left. I took the bottle and put it in the corner beside the bed out of the way and sat down to my supper. I was about finished when Sergeant Zanelli came along and took me to the gate.

I knew the lady about a month. We were good friends. I visited her house. I don't drink cognac except on rare occasions.

My duties are general fatigues in the Kitchen. When the cooks want canvas goods they ask me. I never made any trades without asking the cook.

Cross-exam — I don't know how the margarine got mixed up with the cheese. I don't speak French.

Exam by the Court — I think three tins of bacon would be fair for a dozen eggs.

RP 83 (B) complied with.

With the leave of the Court the

Second witness for the Prosecution

W/Sgt Zanillo is recalled by the prosecution and states:

We drew as high as 90 rations as men were coming and going and we had to be prepared. We fed as many as 70 or 80 men. When the platoon is busy the average number to feed is 25. Rations were continually disappearing from the Kitchen lorry. When Schiffer was parade to hint Bayly it was definitely ordered that no rations would be traded without the senior NCO being present. I was busy one day and I gave Schiffer permission to trade some stew for some celery, cabbage and tomatoes without being there myself. The permission was only given for that particular occasion. I never gave Schiffer any further permission. I told Owen some time ago that he was strictly forbidden to deal with rations.

TC

Cross. Exam — None.

Exam by the Court — None.

RP 83 (B) complied with.

aC

Closing address by Defending Officer.

1. The platoon officer gave permission for rations to be traded.
2. The NCO's gave permission to the cooks, who in turn allowed the accused to do the trading.
3. In this case the accused had permission from the cook to make the trade.
4. He did not know the cognac was in the bag. When he found it he asked the lady about it and she told him it was a gift.
5. The accused is not guilty of theft as he had no intention of stealing having obtained indirectly the permission of his platoon commander to trade the food.
6. The accused has been in the army 2½ years without any offences entered on his MFM 6. Has been a hard worker and good soldier.

AC

(25)

Closing address by Prosecutor.

1. The platoon Officer for permission only for trades to be made under the supervision of a senior NCO.
2. The sergt. delegated the authority to the cook on one occasion but for one time only.
3. The accused was told that under no circumstances would he make trades.
4. The cognac, eggs and tomatoes were all together and part of the same transaction.
5. The woman returned the next day for the goods showing that there was no genuine gift.
6. The platoon as a whole were not going to benefit by the bottle of cognac.
7. Theft of rations was prevalent in this platoon.

2C

The Judge Advocate sums up as follows:

1) The duties of the Court are explained.
2) The duties of the JA are explained.
3) The offence of stealing is defined and explained.
4) The necessary elements of the offence are explained.
5) The evidence of each witness is remained and rules of evidence explained.
6) The civilian witness Mrs D'Hondt, being in the nature of an accomplice the rules applying to the evidence of an accomplice are explained and corroboration is defined and explained.
7) The law as to theft, embezzlement, fraudulent conversion etc. is remained.
8) The duty of the prosecution to prove guilt is explained.
9) The rule as to 'reasonable doubt' is explained and 'reasonable doubt' is defined and explained.
10) The Court is advised as to the possibility of a special finding.

DAILY PART I ORDER
issued by
Major D.C. Shaw
Officer Commanding

Exhibit F

(39)

2 MOTOR AMBULANCE CONVOY, R.C.A.S.C.

No. 174 | Last Part 1 Order No 173, d/29 Jul 44 | 31 Jul 44

1. DUTIES: TUESDAY 1 Aug 44

Orderly Officer: Lt L.M. Bayly
Next for Duty: Lt. D.A. Pettigrew

2. PARADES:

Reveille	0630 hours
Breakfast	0700 "
Sick Parade	0715 "
Morning Parade	0800 "
Dinner	1200 "
Afternoon Parade	1325 "
Supper	1700 "
Fires out	2100 "
Lights Out	2100 "
Tattoo	2245 "

3. M.T. MAINTENANCE:

Task No. 2 will be completed on Tuesday in addition to Daily Running Maintanence Task. This Task will be completed on all vehs whether they are on Daily Duty or not.

4. POSTINGS:

The u/m personnel reposted to pls as shown hereunder w.e.f. 30 Jul 44:

F. 87536 Pte FENGLER, G. from "C" pl to "HQ" pl
G. 7103 Pte MILLS, G.E. from "HQ" pl to "C" pl

5. PROMOTIONS:

Relinquishes the rank of A/L/Cpl(unpaid) and to be L/Cpl (with pay) w.e.f. 30 Jul 44:

D.127218 a/L/Cpl ORAM, R.J.

6. PUNISHMENTS:

Was on 3 Jul 44 awarded forf of 7 days Pay for an offence Under A.A. Sec 40- neglect to carry out Daily Maintenance:

H.195029 Pte JACKSON, R.H.D.

7. DISCIPLINE:

No personnel will leave camp without first obtaining permission from a superior officer.

8. LOOTING:

Looting is taking anything from any building, or field, that belongs to the civilian population, whether or no the building has been wrecked or completely demolished.
The value of the article taken does not matter, nor whether the article is broken or not.
Leave all property alone or you will be accused of looting.

(P.T.O.

9. OUT OF BOUNDS:

All towns are out of Bounds to all ranks except when they are billeted in the town or operating therein.
Headquarters, wksp and reserve pl personnel will NOT proceed into CAEN or St Germain unless written authority has been obtained from an officer, except when on duty.

Cafes, Inns, Estaminets, Brothels, are out of bounds to all ranks at all time whether off duty or on duty.

10. DRESS:

All ranks will be properly dressed att all times in accordance with the task which they are performing .

11. SHAVING:

All ranks will shaved before breakfast. The habit of waiting until later will cease. Active operations does not mean sloppiness and no man will be excused, except when they have been on active duty all night or in a position where it has been impossible to carry out ablutions.

12. WALKING OUT:

Steel helmets and arms will be carried.

13. SALUTING:

Usual compliments will be paid by all ranks at all times .

14. SPEEDING:

Vehs when traveling in or out of camp will keep to a normal speed, when on highways an excessive rate of speed will NOT be allowed above that which at present is governing the Veh.

15. PURCHASING - BARTERING:

No articles of any kind, nor food or drink, are allowed to be purchased or obtained by barter.

16. FRENCH WELFARE RECEIPT VOUCHER:

1. There are circulating in France a number of French Welfare Receipt Vouchers which may be mistaken for currency notes.
2. They are recognisable by the words "BON DE SOLIDARITE" printed in heavy type on the face of the note, and by a replica of Marshall Petains head. Heading the printing on the reverse side of the note are the words "CE BON A AUCUNE VALEUR MONETAIRE".
3. Thes vouchers have no monitory value and will not be accepted by Cashiers.

17. DEMONSTRATIONS BY CIVILIANS:

All ranks of 21 Army Gp will refrain, in all circumstances, from becoming personally involved in arguments or demonstrations, political or otherwise, among civilian innabitants abroad.

18. MEDICAL - FIRST FIELD DRESSING - CARRYING:

1. The provisions of Overseas RO 4536 on the carrying of First Field dressing will not apply from the date of this Order, to Cdn Troops placed in combination with 21 Army Gp.
2. All Cdn personnel serving with 21 Army Gp, who have not already been ordered to do so, will carry First Field Dressing at all times

Certified True Copy R Montgomery Lt.

SUMMARY OF EVIDENCE IN THE CASE OF:

D.127333 pte John Arthur OWEN, 2 Canadian Motor Ambulance Convoy, R.C.A.S.C., a soldier of the Canadian Army Overseas, Charged with Stealing W.D. Property.

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

First Witness:
A.57971
Sgt Finnen, C.H.

A.57971 Sgt FINNEN, C.H., 2 Canadian Motor Ambulance Convoy, RCASC, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am A.57971 Sgt FINNEN, C.H., 2 MAC RCASC. At approximately 1730 hours 29 Oct 44 I was informed by L/Sgt ZARRILLO that he had seen a woman leaving the area of our Kitchen Lorrie and that he suspected the handbag, she was carrying, to contain rations from our kitchen. I immediately went to the front gate of the farmyard, in which we are bivouaced, to stop the woman and inspect the handbag before she left the camp area. L/Sgt ZARRILLO later joined me there and we waited until approximately 1830 hours before the woman attempted to leave the grounds. As she was leaving the camp area we stopped her and asked her what she was carrying in the handbag. She told me it was milk. I asked if I could examine the bag and she passed the bag to me. I found it to contain 3 (three) tins of bacon, 1 (one) tin of margarine and some loose rice in the bottom. I asked her where she got the goods from and she said from one of the soldiers. I then asked her what she had given in return for the above mentioned commodities, and she told me a bottle of cognac. I then asked her if she could identify the soldier with whom she had been dealing. At first she was reluctant to identify anyone but when I explained to her that it would be much easier if she would identify the soldier, she then said she would. I then had pte OWEN, J.A., a cook's helper in the kitchen and the two cooks brought forward for her to identify. She identified pte OWEN, J.A. as the soldier she had been dealing with. I took the commodities from her and she left the camp area. I then inspected the kitchen in company with L/Sgt ZARRILLO and found the bottle of cognac in the kitchen.

The accused declined to question the witness.

Signature of Witness: [signature]
A.57971 Sgt Finnen, C.H.

Second Witness:
D.123066
L/Sgt Zarrillo, N.

D.123066 L/Sgt ZARRILLO, N., 2 Canadian Motor Ambulance Convoy, RCASC, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am D.123066 L/Sgt ZARRILLO, N., 2 MAC RCASC. At approximately 1730 hours on 29 Oct 44 I saw a woman leaving the Kitchen Lorrie in an unusual manner. She had a handbag which was bulged out. She did not use the path leading to and from the kitchen which aroused my suspicions. I saw her go into the farm house in the camp lines where I could not follow her. I then informed Sgt FINNEN of what I had seen and asked him if he would watch the gate to see that the woman did not leave the camp before we had inspected the handbag. I later joined Sgt FINNEN at the gate and we waited until approximately 1830 hours until the woman approached us on her way out of the camp. Sgt FINNEN and myself asked her what she had in the handbag and she told us milk. We asked her if we could look into the handbag which she handed to Sgt FINNEN. She had 3 (three) cans of bacon, 1 (one) can of margarine and some loose rice in the bottom.

AC

We asked her where she got it and she said, soldier. I called pte DESCART out of the Orderly Room tent at the gate to act as interpreter. He asked her who the soldier was who had given her these commodities. At first she said she did not know till we told her it would be much simpler for her if she told us who he was. We then brought the two cooks and the helper, pte OWEN, out to be identified. She pointed to pte OWEN and said he gave her the commodities for a bottle of cognac. She was then told she could leave the camp! Then we went to the kitchen to look for the cognac which we found hidden under some blankets. I then informed pte OWEN that he was under arrest and would be charged with stealing rations. Next day at approximately 0800 hours, the lady came to my tent and wanted to know if she could have her cognac back. From what I could understand she claimed she paid 300 francs for the cognac and since she did not get anything she wanted the cognac. I told her she could not have it until the case was finished.

The accused declined to question the witness.

Signature of Witness: M. Zarrillo
D.123066 L/Sgt Zarrillo, W.

Third Witness:
Mrs. A.D'Hondt
7 Assinedesteenweg
Zelzate, Belgium

Mrs. A.D'HONDT, civilian citizen of 7 Assinedesteenweg, Zelzate, Belgium, having been duly sworn states:

I am Mrs. A.D'HONDT, of 7 Assinedesteenweg, Zelzate, Belgium. I came to the kitchen with my two children on Sunday 29 Oct 44 at approximately 1700 hours. I asked pte OWEN for a box of cheese for my children. I told him I would give him the contents of my bag for the cheese. I passed him the bag with the eggs and the cognac and tomatoes. He did not know what was in the bag. He gave me the bag back and I went to the farm house for my milk. I stayed there about half an hour and then went to the gate where I was stopped. They opened the bag at the gate, the soldiers who stopped me, and took the cans out and then after I had been asked to, and identified the soldier who had given the cans to me, I left the camp. I gave the eggs and tomatoes for the cheese but the cognac was a gift for the soldier. I came back the next morning to see if I could get food for my children.

The accused declined to question the witness.

Signature of Witness: Mrs A.D'Hondt
Mrs. A.D'Hondt
7 Assinedesteenweg
Zelzate, Belgium.

The accused was warned as follows:

"Do you wish to make any statement or to give evidence on 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, will be taken down in writing and may be used in evidence".

The accused- I do not wish to make a statement at this time.

cc

(35)

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.

P.L. Mainguy Lt

(P.L. Mainguy) Lieut

20

In the Field
31 Oct 44

5P-84.

Pte. Overkott, W.P.

SCHEDULE.

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

Accused: B 131235 PTE OVERKOTT, W. P.

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	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, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ 24/7/45

(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 25 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 90 days.

(Sgd) ~~Judge-Advocate, if any~~ 10 Jul 45 (Sgd) A Brown Maj'r 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(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) bal,

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

(Sgd) Gordon A. Sinclair Brig.

Date 13 Jul 45 Commanding DDMS 1 Can Corps Confirming Officer.

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

Accused.	Date.	Signature of Offr.
B-131235 Pte William Patrick Overkott	15 July 45	L/W. H. McNabb Lieut A/OS. 16 Can Spec Emply Coy

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 168 5 P; 84

CFA96 (In lieu of AF A32) 41-7 A.G.R. (1808) (2804)

FIELD GENERAL COURT-MARTIAL

Convened by Order of E. DEGEER LT. COL. Comd CRCASC 1 CDN CORPS Dated 26 JUNE 45

RECEIVED 29 JUL 1945 JAG BRANCH CMHQ

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 Can 308, 328, 330.)

No.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 131235	Pte	WILLIAM PATRICK	OVERKOTT	16 CDN SPEC EMP. COY.

PROCEEDINGS REVIEWED

W. J. Ludgrove Capt 24 July 45

REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 13 JULY 45 / 10 JUL 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 to RPs. 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 1045 D 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 Nil (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.E. BROWN	13 FD COY RCE
Member	LIEUT	N.L. STANLEY	HQ 1 CDN CORPS DEF COY
Member	LIEUT	E.N. KENWARD	1 CDN CORPS SIGS.
Judge-Advocate			
Prosecutor	LIEUT.	W.F. VAN ALSTINE	16 CDN SPEC EMP. COY
Defending Offr	LIEUT	M.W. BERRIDGE	1 CDN CORPS TPS TPT COY.

Questions by President: Is the Prosecutor a lawyer? Ans Nil. Is the Defending Offr a lawyer? Ans Nil. (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 131235 PTE WILLIAM PATRICK OVERKOTT before arraignment make(s) (no) (~~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 in one of several accused charged jointly to be tried separately (RP 16, 71), such pleas, 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 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; ascertaining 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 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.

Prefix to 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 (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.(2) ~~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).(3)~~
(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 As a witness. Do you intend to call witnesses on your behalf? Ans No. 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 findings 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 A and Ex 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 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 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, 136, 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.

CHARGE SHEET

The accused, B-131235 PTE WILLIAM PATRICK OVERKOTT, of No 16 Cdn Special Employment Company, a soldier of the Canadian Army Overseas,

is charged with,

First Charge
Army Act
Section 19

When on Active Service,
DRUNKENNESS,

in that he,

in the field, when on Guard Duty, at 2359 hrs 13 June 45 was drunk.

Second Charge
Army Act
Sec 8(2)

When on Active Service, Using Insubordinate Language to His Superior Officer,

in that he,

in the Field, at approximately 0745 hrs on 14 June 45, when ordered by Sgt Lawrence J.H. to pack and return to the Unit under close arrest, replied," I will pack when I feel like it" or words to that effect. And when again given the command, replied,"The Three hooks on your arm mean nothing, you are a cunt and a prick" or words to that effect.

In the Field
22 June 45

(W. R. Plourde) Capt
A/Officer Commanding
16 Cdn Spec Emp Coy
Cdn Army Overseas

To be tried by Field General Court-Martial.

(E.DeNeer) Lieut-Col.
CRCASC. 1 Cdn Corps Tps.

In the Field,
26 JUN 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 22. 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-131235	private		William Patrick	OVERKOTT,	16 Cdn Spec Emp 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*) 26 JUN 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 an Judge-Advocate to act the Offr mentioned hereunder.~~
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J.E. Brown,	13 Cdn Fd Coy, RCE

MEMBERS.

A Capt or Lieut to be detailed by OC 1 Cdn Corps Sigs, RCCS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Capt or Lieut to be detailed by OC 1 Cdn Corps Def Coy		(Lorne Scots)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
A Capt or Lieut to be detailed by Comd RCOC,		1 Cdn Corps Tps

JUDGE-ADVOCATE.

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

On Active Service in the Fd

in Holland
(Country.)

(Signed personally. RP 105 fn 2.) (E. DeGeer) Lieut-Col. (Rank.)

Date 26 JUN 45

~~Commanding~~ CRCASC, 1 Cdn Corps Tps.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

J66

MEDICAL OFFICER'S CERTIFICATE

I CERTIFY THAT THIS MORNING I HAVE EXAMINED NUMBER B-131235

Pte Overkott, W P OF 16 Cdn Special Employment Coy..

AND IN MY OPINION HE IS FIT/XXXXX TO UNDERGO TRIAL BY FIELD

GENERAL COURT MARTIAL.

STATION Field

DATE 10 July 1945

B Wintrob capt.
(MEDICAL OFFICER)

B131235 pte W.P. Overhall 16 Cdn Spec Emp. Coy.

D3.

1st witness

B79231 Sgt. Lawrence J.H. 16 Spec Emp Coy

Having been duly sworn states:—

My duties when I was attached to ADOS was that I was to be i/c of whole park of M.L. As I had no NCO assistants I was i/c of guard in addition to other Duties.

Conductor Archibald detailed me to go to Canteen to check a man whom he didn't recognize. On arriving there I found accused arguing with Canteen Corporal. Canteen Corporal said that Bar was closed & no further drinks were available. I asked accused to return to Guard Barracks but he continued to argue. I then ordered accused to return to the Barracks but he insisted on another drink. I asked Sub Conductor Archibald for two escorts to have him removed for to the barracks. After some persuasion accused was removed to the truck & placed in the back by the escort. On arrival at the billets

JHB

I warned accused he was detailed for guard at 2359 hrs & to get some sleep. Accused replied that he wanted be ready for guard & did not require sleep. I told escort to assist him upstairs & he remonstrated against this & challenged guards to a fight. I tried to impress upon accused that his attitude would do him no good & I attempted to assist accused upstairs & was challenged to remove my tunic. Believing that this was only orderly way I could get accused upstairs, I struck the accused on the jaw. Upon falling to the ground he admitted that he had had enough & retired to his room. At 2359 hrs accused was found incapable of doing his guard & I replaced him with another man who had already done duty during the day. At 0630 hrs 14 Jun I went to accused room to tell him that he was under close arrest, and to prepare to return to camp. Accused made no attempt to get out of bed until after repeated warnings me to pack up. At 0745 hrs, ~~while waiting for accused~~, accused came out & tried to make me overlook events of previous evening on grounds

JHB

he had been a long time without drinking.
I replied that a soldier being warned for guard should not be drinking.
He continued to plead with me saying that his acts would not be repeated, but I told him I could not let him off & must set an example. He started to get mad & called me a cuset or pick words to that effect.

Q. ~~Did~~ Were you responsible for obtaining men for guard duty

a. Yes.

Q. On this particular night, was guard invited to this party.

a. I had no knowledge of it on another instance I heard that guard had been invited but not on this particular evening

Q. Could it be presumed that guards were free of their duties on this night.

a. No

Q. But Conductor Archibald considered you were w/c of guard on that evening.

a. Yes sir.

Q. What was Overcotts condition when you arrived at Cantee.

a. He was drunk but sober enough to recognize me & know what he was doing.

JGB

Q. What drinks were being served

a. I don't know

Q. What time was Overcott warned for duty that night

a. It was normal & understood that his shift would be on duty that night

Q. Did you yourself find Overcott incapable of standing guard at 2359 hrs.

a. Yes.

Q. What was his condition at 0630 hrs.

a. His mind was foggy but he understood me

~~Q. What~~

Cross exam by Pob.

Q. approx time you warned Overcott for guard

a. 2330.

Q. You warned ~~guard~~ overcott at that time for guard duty for 2359.

a. Only if he was in suitable condition

Q. When you were at Canteen did you notice any other of your men you could warn for guard duty

a. No.

Q. My understanding is that guard detail is on a daily basis with no time off.

a. In this case I was forced to place ~~Overcott~~ pte wickam on an additional duty.

Q. There time is there over when not on guard

a. Yes.

JGB

Q. It is impossible for you being the only N.C.O. to say that each man on guard is at all times sober & doing his job.

a. Yes

Q. Do Guards know their own shifts well in advance ~~of any~~

a. Yes.

Q. Had many previous parties been held.

a. Only one previous to my knowledge.

Q. Is there any check to see that guards are always on duty

a. I make the check myself when I am available

Q. You say you & accused arrived at billets at 2330

a. Yes

Q. Would you say that Blow struck the Overcoat would affect his ability to report at 2359

a. No sir.

Q. Did you check up to see whether the guards were specifically invited to this dance

a. No Sir

Q. by pros. Did any of the other guards feel that because of the party they were free for this party.

a. Yes the men that were on during the daytime

[signature]

2nd Witness

B59626 pte Sd. Ong S.P. 16 Spec Emp Coy having been duly sworn states:—

On morning of 14th at 0745 hrs I was wanted by Sgt Lawrence to pack Overcotts Kit. I heard pte Overcott refusing to pack his kit. He said that Sgt Lawrence couldn't make him do it. When asked if he saw Sgt Lawrence & Overcott together witness replied he did not - he only heard the refusal to pack his kit. When questioned by court if he heard Sgt Lawrence talk to accused he replied no. When asked if pte Overcott appeared Drunk or sober he replied I can't say.

R.P. 83(B) complied with.

3rd Witness

A116420 pte Johnston, E.D. of 16 Can Spec Emp Coy having been duly sworn states:—

On 14 day of June at 0745 hrs I heard pte Overcott call Sgt Lawrence a cunt.

When questioned as to the place he replied by the guard house & advised that he saw both Sgt Lawrence & pte Overcott together.

J.B.

When questioned as to whether he had noticed any other members of the guard in the canteen during the evening he replied that he had noticed one man earlier & had had canteen corporal ask him to leave. Further questioned as to whether he thought two men were necessary to remove him from the canteen. Witness replied that he supplied two men on Sgt Lawrence's request.

Cross examination

Witness was asked for time he asked for Overcoat to be removed from canteen & answered about 1030 hrs.

Asked if he attended or hear of party in May he replied that he had no detailed knowledge of previous party. Asked if invitations to these parties were written or verbal he replied verbal.

When questioned by Court as to reason he had guard warned earlier to leave the canteen he replied that due to fact that he was wearing web equipment he assumed he was on duty & simply warned him to leave the canteen rather than prefer charges against him

R.P. 83(B) complied with.

Fifth Witness

A 86004 Cpl Cotton, B.H. of HQ 1 Cdn Ord Fd Pk having been duly sworn states:—

The party was informal & was announced verbally by me on the mess at noon time. A supply of Lyon was authorized by Major Denis & was dispensed under my supervision at approx 2130 hrs. I felt that pte Overcott had had sufficient & ceased serving him. Mr Archibald was in the ~~mess~~ canteen and spoke to pte Overcott after which he called for Sgt Lawrence. Overcott was asked to leave & removed by two men, and I saw him no further that evening.

Questioned as to the verbal announcement he said it was an open invitation to all that could come to do so.

5 litres of gin & 8 litres of cognac were available and amount consumed by any one man was determined by his conduct.

Questioned as to Overcotts condition at 930 he said that he was getting noisy & he felt that he had had enough & had not been acting up previous to that time.

Q. It is impossible for you being the only N.C.O. to say that each man on guard is at all times sober & doing his job.

a. Yes

Q. Do Guards know their own shifts well in advance ~~of any~~

a. Yes.

Q. Had many previous parties been held.

a. Only one previous to my knowledge.

Q. Is there any check to see that guards are always on duty

a. I make the check myself when I am available

Q. You say you & accused arrived at billets at 2330

a. Yes

Q. Would you say that Blow struck the Overcoat would affect his ability to report at 2359

a. No sir.

Q. Did you check up to see whether the guards were specifically invited to this dance

a. No Sir

Q. by pros. Did any of the other guards feel that because of the party they were free for this party.

a. Yes the men that were on during the daylight

[signature]

Question by Court. Was a duty roster with Overcoats mom or it posted in a prominent place showing him warned for duty that night.

a. Yes Sir.

R.P. 83(B) complied with

JB

2nd Witness

B59626 pte St. Ong J.P. 16 Spec Emp Coy having been duly sworn states:—

On morning of 14th at 0745 hrs I was warned by Sgt Lawrence to pack Overcatt's Kit. I heard pte Overcatt refusing to pack his kit. He said that Sgt Lawrence couldn't make him do it. When asked if he saw Sgt Lawrence & Overcatt together witness replied he did not - he only heard the refusal to pack his kit. When questioned by court if he heard Sgt Lawrence talk to accused he replied no. When asked if pte Overcatt appeared Drunk or sober he replied I can't say.

R.P. 83(B) complied with.

3rd Witness

A116420 pte Johnston, E.D. of 16 Can Spec Emp Coy having been duly sworn states:—

On 14 day of June at 0745 hrs I heard pte Overcatt call Sgt Lawrence a cunt.

When questioned as to the place he replied by the guard house & advised that he saw both Sgt Lawrence & pte Overcatt together.

JB.

On Cross examination he was asked to explain circumstances surrounding conversation.

He advised that was within hearing for about five minutes & was not taking any interest in conversation until pte Overcoat call Sgt Lawrence a cunt.

Questioned by Court as to the exact words used. pte Johnston replied that he only heard the one word cunt.

R.P. 83(B) complied with.

Fourth Witness

K73211 ~~Sub~~ Cond Archibald, L.C. of H.Q. 1 Cdn Corps Ord Fd pk having been duly sworn states

On afternoon of 13 Jun. Mgr Finis 2/c of unit asked me to check the bar at a party being run in mess mess. I dropped in several times during the evening. At approx 1000 O'Clock I went in and found pte Overcoat in a drunken condition. I made enquiries from the corporal as to his unit & was advised that he was a member of the guard. I detailed a runner to fetch Sgt Lawrence. Sgt Lawrence was detailed by me to remove this man from the canteen & at Sgt Lawrences request supplied two men for the purpose.

When questioned as to Overcoats condition he replied that he was too drunk for duty

When questioned as to whether he had noticed any other members of the guard in the canteen during the evening he replied that he had noticed one man earlier & had had canteen corporal ask him to leave. Further questioned as to whether he thought two men were necessary to remove him from the canteen. Witness replied that he supplied two men on Sgt Lawrence request.

Cross examination

Witness was asked for time he asked for Overcoat to be removed from canteen & answered about 1030 hrs.

Asked if he attended or knew of party in May he replied that he had no detailed knowledge of previous party. Asked if invitations to these parties were written or verbal he replied verbal.

When questioned by Court as to reason he had guard warned earlier to leave the canteen he replied that due to fact that he was wearing web equipment he assumed he was on duty & simply warned him to leave the canteen rather than prefer charges against him

R.P. 83(B) complied with.

Fifth Witness

A 86004 Cpl Cotton, E.H. of HQ 1 Cdn Ord Tel Pk having been duly sworn states:—

The party was informal & was announced verbally by me on the mess at noon time. A supply of Lyzin was authorized by Major Dennis & was dispensed under my supervision. At approx 2130 hrs I felt that pte Overcott had had sufficient & ceased serving him. Mr Archibald was in the ~~mess~~ canteen and spoke to pte Overcott after which he called for Sgt Lawrence. Overcott was asked to leave & removed by two men, and I saw him no further that evening.

Questioned as to the verbal announcement he said it was an open invitation to all that could come to do so.

5 litres of gin & 3 litres of cognac were available and amount consumed by any one man was determined by his conduct.

Questioned as to Overcotts condition at 930. he said that he was getting noisy & he felt that he had had enough & had not been acting up previous to that time.

[signature]

89

Witness was asked to describe state of intoxication reached by Overcott at ~~0430~~ 2130 hrs: Witness replied that he was becoming intoxicated and insisted that more liquor be served to him.

Cross examination

At noon meal did any guard ask you if they were included in the invitation & witness replied he didn't know who was on duty. Questioned as to whether he gave any further drink to Overcott after 2130 hrs he replied NO. Witness was asked if any other guards attended the party & he replied yes other guards were there during the evening.

Questioned by the Court as to whether any Senior N.C.O. were present when the announcement was made at lunch. Witness replied there were none.

RP 83(B) complied with.

JB

D6.

The accused B131235 pte W.P. Overkatt 16 Cdn Spec Emp Coy having been duly sworn states:-

I was on guard detail at ADOS dump for approx 6 weeks prior to June 18th. The twelve guards are divided into 3 shifts of 4 men each. I was with the same guard detail and guards arranged their own shifts. Alternate shifts were arranged so that first shift one night would become the second shift the following night & so on. It was the custom of the guard to awaken the next shift. The guard commander was seldom seen and sometimes a day would pass without a visit from him. At noon meal parade on 13 June, Corporal of messing committee announced the smoker to be held in mess that evening and invited all personnel. After this announcement, one of the guards enquired if this included the guards to which the Corporal answered "Yes". The guard had the daytime to themselves and that afternoon I went to Utrecht. I returned at 7 O'clock and went to the men's mess. The smoker was late in getting under way & started at about 8.15. Upon entering the Canteen

[illegible]

I saw Sgt Lawrence. I asked the Canteen attendant in Sgt Lawrence's presence what time the smoker would start. He replied pretty soon when the boys arrive. When I arrived Sgt Lawrence was checking regarding cigarettes ordered by guard that day. Canteen Corporal advised that the ADOS list had gone in, and that he would try and get guard on FMSS list. I waited around until the smoker commenced. I had quite a few drinks of gin & cognac and became intoxicated. During the evening I saw some of the other guards at the smoker. Later on I lost track of the evening, and ~~was~~ next remember being awakened by Sgt Lawrence and being told I was under close arrest. I dressed and went outside and talked to Sgt Lawrence on the roadway, and explained to him that we had been invited to the smoker. He said that we were not invited & told me to get ready to return to the company. I got into the truck, and as Corporal Cotton came along, I asked him if the guard had not been invited to the smoker. He replied in the affirmative – I asked him to explain that to Sgt Lawrence, which I believe he did.

Cross examined by Def.

During your term on guard where you ever guard regarding your duties. (A) No.

JHB.

~~where~~ Witness was asked if a duty roster was ever put up or if the guards arranged details of guard duty themselves and replied no roster was kept that details were arranged amongst themselves.

Asked what time he commenced drinking that day. Witness replied at 8.15 and in reply to a question as to whom he last remembered talking to that day said Condr Archibald and remembered nothing else until next morning

Witness was asked for his reply to orders by Sgt Lawrence to return to Camp & said I will be up in a few minutes

In reply to question regarding language allegedly used in front of the house the witness denied the use of the words cunt & a prick

Cross examined by prosecutor

Witness was asked if he felt announcement of smoker automatically relieved him of his guard duties & replied that he thought he was off for the night and the dump would be without a guard.

Witness was asked if he made any enquiries as to whether he was relieved of his guard duties & replied no. I acted as upon the previous occasion.

10 a

Question by Court

Wilson was asked if guards he saw in smoker during evening were on duty and he replied yes.

Quelons was asked if he remembered being struck and replied no.

Wilson was asked why pte Johnston should ~~[illegible]~~ false be presumed to be bearing false witness against by his own evidence and he replied he did not know. ~~Asked~~

R.P. 83(B) complied with.

J.G.

Pros. Address. 11 J.C.B.

To sum up from the evidence presented there seems to be little doubt that the accused had been drinking quite heavily on this night - also with the knowledge that he was required for guard duty later that nite. As Cpl Cotton stated the doors of the party were open to all. He did not stop to think of anyone on duty ~~[illegible]~~ taking advantage of the invitation offered. ~~[illegible]~~

It seems Overcott was not drunk enough ~~to~~ not to either recognize Sgt Lawrence or remember what his duties were for he stated he would be ready for guard duty at 2359, which of course was not the case. He was however drunk enough to become ~~[illegible]~~ overbearing and create a disturbance.

The evidence is quite clear as regards the charge of insubordination. He evidently did not care what he said or who heard him - first of all challenging anyone interested to a fight and secondly using abusive language to Sgt Lawrence, which few persons would stand for. It will be noted that he became most abusive the following morning when he found that Sgt Lawrence would not relent & was determined to send him back to the Company. He could certainly not be drunk enough at 0600 hours the following morning not to realize that what he was saying to his superior officer was a serious offense.

I submit the accused is guilty of both charges & should be dealt with accordingly.

W. Van Alstine Lt.
Pros.

By his own admission he became intoxicated.

did not bother to check further to see if guards were free that evening.

Def. Offr. Address.

JB

The Defence in summing up respectfully asks the court to consider the following facts brought out in evidence before passing judgement

(a) That it was the custom of the guards to consider themselves off duty during the hours when not on shift.

(b) That the guard at ADOS Dump was not conducted as a proper guard.

(c) That there is insufficient evidence as to the using of insubordinate language

(d) That the prosecution has not established a case as to drunkeness when on guard duty

(e) That the accused did not have a drink after 2130 hours 13 Jun 45, and that the accused's tour of duty did not start until 2359 hours 13 Jun 45.

The Defence also asks that the court consider that the accused is married and has had a son born since leaving Canada. His wife is entirely dependent on the accused's allowance cheque. The accused's MFM 6 is clean but for two minor charges.

Sheets included

1.	8.
2.	8a.
3.	9.
4.	9a.
5.	10.
5a.	10a.
6.	11.
6a.	12.
7.	

JB

EXHIBIT "A"

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-131235	Pte	WILLIAM PATRICK OVERKOTT	16 Cdn Spec Emp Coy

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 number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognized 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 Drunkenness	(1) times	(1) times
For A. W. O. L.	(1) times	(1) 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 8 days in military custody, making a total of 8 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 36 yrs 5 months

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 13 August 1942

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs 10 months

8. The accused is entitled to deferred pay or gratuity in respect of 2 yrs 10 moths service.

9. The accused is entitled to reckon 2 yrs 10 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 award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)). C.V.S.M. 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~~

[*22647] Wt.31708/1377 10,000 10/42 A.& E.W.Ltd. Gp.688
[*24431] Wt.13227/431 26,000 5/43 " "

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-131235 Rank pte. Name W. P. Overcott of 16 C S E Coy. ~~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 22nd day of June 1945.

[signature]
Hoc No. 16 Can. Spec. Emp. Coy.
Cao.

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

~~Date of Promotion~~ [initials]

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 sources as are available and the paragraphs concerned amended accordingly.*)

No B-131[illegible] Name Overkott William Patrick Sqn, Battery, or Company Corps R.C.O.C. Date of enlistment 13-8-42 GC Badges Service or Proficiency Pay $1.50 10-4 MFM 6 (AFB 122) 40/PAM/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 1 | Signature OC Company, etc | Character EXHIBIT "B"

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 MFM 6					
Field	6 Jan 45	Pte	1	AA Sec 19 Drunkenness	Sgt Inge Cpl Bell	Admonished	10 Jan 45	Major F.M.Nash	
Field	1 Feb 45	Pte		AA Sec 15 (1) A.W.L. from 2200 hrs 1 Feb 45 to 2315 hrs 1 Feb 45 (Total absence 1 hr 15 mins)	Sgt Burns Cpl Jamson	3 days F.F.	2 Feb 45	Major F.M. Nash	Forf 3 days Pay P.R.I 149 (2)

(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
				I certify that this is a true Copy of AFW 6.					
				(V. R. Plourde) Capt A/Officer Commanding 16 Can Spec Emp Coy Can Army Overseas					

Summary of Evidence

In the case of B-13125 Private Overkott, W.C. of the 16 Cdn Special Employment Company. A soldier of the Canadian Army Overseas.

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

First Witness - B-79231 Sgt. Lawrence J.H. of 16 Cdn Spec Empty Coy having been duly sworn states.

I am B-79231 Sgt Lawrence J.H. of 16 Cdn Spec Empty Coy on detachment to the 78 R.C.O.C. Depot. On June 13 I was called by Sub Conductor Archibald to report to the Men's Mess. On arrival Sub Conductor Archibald said there was a soldier in the Canteen with an ordinance badge on whom he did not recognize and said he believed it was one of my men. On arrival I found Pte Overkott W.C. arguing with the canteen corporal and insisting on more to drink. Pte Overkott had been drinking but recognized me. I ordered him to the

[illegible] but he continued to argue and I asked Sub Conductor Archibald for two escorts to get Pte Overkott to the truck. Which they did after much persuasion. On arrival at the billets I ordered Pte Overkott to bed and told him that he was supposed to report for guard shift at 2359 hours and to get some sleep. He argued that he would do his shift and after much persuasion he retired to his room. At 2359 hours Pte Overkott was incapable of carrying out his duties as a guard and I had to replace him with another guard. Pte Wiggins who had already fulfilled his duty during the day, but through necessity had to call him again. At 0630 hours next day 14 June I woke up Pte Overkott and told him that he was going back to the Company under close arrest. I had to repeatedly call Pte Overkott to get up. At 0745 hours Pte Overkott came out on the roadway and tried to persuade me to overlook the incident of the night before. I told him that he was still going back to the Company and to get packed up. After repeated warnings he became rebellious and insisted

the shake on my arm didn't mean
a thing if it came to a Court Martial. While
entering the house I heard him call me
a cunt and a prick or words to that effect.

Sgt J.R. Lawrence.

Q. - Have you left anything out of your
evidence?

A. - No sir.

Q - Do you remember striking me?

A. - Yes sir. Pte Turnbull in his evidence
challenged not only myself but anybody
else who was around to a fight. The
remainder did not say anything and he
challenged me again to take off my tunic
in a fight. I took off my hat and tunic
and gave it to one of the men to hold. Pte
Turnbull then closed against me and I stepped
back and hit him. Pte Turnbull said he had
enough and I tried to help him on his feet
again and ordered two of the guards standing
by to take him up to his room.

Sgt J.R. Lawrence.

Second Witness - A-116420 Private Johnston.
E.D. of 16 Coln Spec Empty Coy - having been
duly sworn states.

I am A-116420 Pte Johnston E.D. of 16
Coln Spec Empty Coy on detachment to
#78 P.C.O.C. Depot. On the morning of

June 14 at about 0745 hours I heard Pte Overhott say cunt to Sgt Lawrence

E. D. Johnston.

Q. - What answer did you give when before the Commanding Officer?

A. - I said I did not have anything to say

Q. Did the Commanding Officer threaten you with severe punishment if you appeared in front of him on any charge.

A. The Commanding Officer said he would show no sympathy for me if I came up before him

E. D. Johnston.

Third Witness - B-59626 Private St Onge J.P. of 16 Cdn Spec Empty Coy having been duly sworn states

I am B-59626 Pte St Onge J.P. of 16 Cdn Spec Empty Coy on detachment to #18 R.C.O.C. Depot. On the morning of June 14 Sgt Lawrence ordered us to go and pack Pte Overhott's kit. Then when I got upstairs I found I could not pack his kit without having a witness. So then just as I came out of the door I heard Pte Overhott say to Sgt Lawrence that he would pack it when he was ready. After that I

w[illegible] to get my belt and I did not hear any more

J.P. S.F. Ongl

Q. How did you know you should have a witness when packing a kit.

A. As soon as I ran upstairs I knew that if I packed a kit without a witness I would be liable to be in wrong.

Q. When did you hear me refuse to pack my kit?

A. When I came back down stairs after being sent up to help pack.

Q. When was I when I refused?

A. Just coming in the door.

Q. At the time I said that could you see Sgt Lawrence?

J.P. S.F. Ongl

A. No sir

Fourth Witness - K-73211 Condr. L. J. Archibald of H.Q. 1 Cdn Corps Ord. Field Park. A soldier of the Canadian Army Overseas having been duly sworn states -

I am K-73211 Condr. L. J. Archibald of H.Q. 1 Cdn Corps Ord Field Park. On the night of June 13 the Warrant Officers of H.Q. Ord. were detailed by the 2 1/6 to keep a check on the bar being ran at a party in the Men's Mess. At about 2200 hours I went into to check and see how the party was going. At the bar I saw a soldier, now known to me as Pte Overkott. He was in a drunken condition at that time. He was wearing an Ordinance Cap badge and I assumed that he was a soldier of one of the Ordinance units in the area. On making inquiries I learned that he was a member of the guard attached to Ordinance from 16 Cdn Spec Empty Coy. I imidiately dispatched a driver with a vehicle to bring the guard sergeant from the guard room with the instructions that one of his guard was drunk in the Men's Mess.

On his arrival I showed him when the soldier was and at his request detailed two men to help get Pte Overhott onto the vehicle.

L. G. Archibald Capt.

Q. Did you know at the time that guard was invited to the stag? L. G. Archibald Capt.

A. I didn't.

Fifth Witness - A 86009 Cpl Cotton, E.H. of H.Q. 1 Cdn Corps Ord Field Park. A soldier of the Canadian Army Overseas having been duly sworn states -

I am A 86009 Cpl Cotton, E.H. of H.Q. 1 Cdn Corps Ord Field Park. On the night concerned, June 13 an informal smoker was held in the Men's Mess. To which all members of the mess were invited. On previous occasions all members including the guards have participated in these affairs. On this evening a supply of liquor was received from Major Harris to be dispensed under my supervision. I myself acted as bartender and at approx 2130 hours I saw

that the accused had had sufficient to drink and did not serve him from then until 2230 hours when the bar was closed. Cond. Archibald and Cte Overhott had a discussion after which Mr Archibald called in the sergeant of the guard, Sgt Laurence, who asked the accused to leave the mess. He objected to this and was escorted from the mess by two other ranks.

E Cotton Cpl.

Q. At noon that day did you not make a statement that there would be a stag that night at seven o'clock?

A. Yes.

E Cotton Cpl

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

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

Taken down by me in the presence and hearing of the accused this day 17 June 1945

I hereby certify that provisions of R.P. 4 c d e f & g have duly been complied with.

[illegible] Lieut

Officer detailed to take summary of evidence.

Additional Summary 23 June 1945.

Of Evidence:

In the case of B-13125 Pte Overkott W.P. of the 16 Cdn Spec Empty Coy. A soldier of the Canadian Army Overseas the first witness, B-79231 Sgt Lawrence, J.H. recalled to give further evidence and having been duly sworn states -

I am B-79231 Sgt Lawrence J.H. of 16 Cdn Special Empty Coy on detachment to #78 RCOC Depot.

Q. What is the tour of duty of the guard at #78 RCOC Depot?

A. Each day from 2000 hours until 0800 hours the next day sir.

Q. On the night night concerned what was Pte Overkott's duty?

A. Duty from 2359 hours to 0200 hours sir.

Q. Did Pte Overkott report for his duty?

A. No sir.

Q. Why?

A. Incapable of carrying out his duty because of intoxication.

Q. Did you know that there was a smaller that night and that the guards were invited?

A. Not to my knowledge. I was given no information but I found out at the time I brought back Pte Overkott from the Canteen that a general invitation with no specific inclusion

or not of the guard had given at meal parade, which was supper time.

Q- Any information you had of the stag was purely hearsay?

A- Yes sir.

Q- At on previous occasions were not the guard relieved of their duty for a party held at the ADOS Depot.

A- While in charge of the detachment only once was such permission given. I cannot say if such permission was given at other times.

Sgt J H Lawrence

Taken down by me in the presence and hearing of the accused this day 23 June 1945.

[illegible]
Lieut
Officer detailed to take summary of evidence.

325 D.

Pte Devens P. J.

O. H. M. S.

M. F. B. 270

1000M-12-40 (8008-69-70)

K.Q. 1779-23-47

3250.

Correspondence to be PINNED here.

PROCEEDINGS REVIEWED

3/11/42

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 TWENTY-SECOND day of NOVEMBER, 19 41.

Whereas it appears to me, the undersigned, an officer in Command of SECOND CANADIAN DIVISION, 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;

* 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:—) 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 in the trial of the person named in the annexed schedule.

President.

Rank.	Name.	Regiment.
MAJOR	W.C. Peffers	Sigs 2 Cdn Div

Members.

Rank.	Name.	Regiment.
A CAPTAIN	(To be appointed by C.R.C.A.S.C.)	R.C.A.S.C. 2 Cdn Div
A LIEUT.	(To be appointed by Caupt Comdt. H.Q. 2 Cdn Div)	
	WAITING MEMBERS	
A LIEUT.	(To be appointed by C.C. Tor Scot R (MG)	
A CAPT.	(To be appointed by A.D.M.S. 2 Cdn Div)	R.C.A.M.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 J.H. Roberts) Brigadier

Commanding 2 Cdn Div Cdn Army (A.F.)

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)
D91736, Pte. Owens, P. J., 2 Cdn Div Pet Coy, RCASC,	FIRST CHARGE A.A.Sec. 41 Committing a civil offence, that is to say, driving a motor vehicle on a road under the influence of drink (See charge sheet attached)	Guilty	Guilty To undergo detention for a period of six months	

Confirmed.
Sub Tamil 3 months detention.
J.U. Roberts Brig.

* 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) J.U. Roberts (J. H. Roberts) Brigadier
Commanding 2 Cdn Div Cdn Army (A.F.)
Convening Officer (e)

(Signed) W. O. Pepper Major
2 Cdn Divisional Signals
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.

19

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 November 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)~~
~~4. The officers under instruction)~~

* Omit if not applicable.

were duly sworn.

Signed this 28th day of November 1941

W. O. Pepper 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.) J.U.R.

Signed this 1st day of Dec 1941

J.U. Roberts Brig.
Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) 6 Dec 41 (Signed) E. Smillanet Capt Actg/D.O.
2 Cdn. Div. Petrol Coy, R.C.A.S.C., C.A. (A.F.)

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.

(11239) Wt. 40115—493 200 m 1/40 P. St. G. 820

3

2 Cdn Div Petrol Coy., RCASC
28 NOV 41.

I certify that D-91736 OWENS D.J.

is F.I.T. to undergo trial by

Field General Court Martial.

George S. Morgan Maj

Copy per Smart 5

ABSTRACT OF EVIDENCE

CHARGE

A.A. Sec 41

The accused D-91736 Pte. Owens, P.J., 2 Cdn Div Petrol Company, R.C.A.S.C., a soldier of the Canadian Army (Active), is charged wit h:

Committing a civilian offence, that is to say, driving a motor vehicle on a road under the influence of drink contrary to Sec. 15 (1) Road Traffic Act 1930,

in that he

on or about 14 Oct 41, on Pashley Road, in Ticehurst, did drive D.N.D. Vehicle CL 196681 when under the influence of drink to such an extent as to be incapable of properly controlling the same.

R. J. Dufresne.

Signed in the Field
this 10th day NOV 41.

(R.J.Dufresne)Major,
Officer Commanding
2 Cdn Div Petrol Coy.,
R.C.A.S.C.

J.W.L.

RECORD OF PROCEEDINGS OF A F.G.C.M.

7

1. Trial of No. D-91736 Rank Pte. Name Owen, P.J
Unit 2 Cdn. Div. Petrol Coy., R.C.A.S.C.
Held at Heathfield, Sussex on 26th day of November 1941

2. ACTUAL COURT

PRESIDENT:

Major, W.C. Peffers 2 Cdn Divisional Signals

MEMBERS:

Capt. R.A. Walker H.Q.,R.C.A.S.C. 2 Cdn Div
Lieut. W.K.W. Baldwin Toronto Scottish Regt.

3. PROSECUTOR: Lieut. L.S. Pommet 2 Cdn Div Petrol Coy.
DEFENDING OFFICER: Capt. Mercier 2 Cdn Div R.C.A.S.C.

4. The accused is arraigned and pleads "guilty" to the following charge": "Committing a civil offence, that is to say, driving a motor vehicle on a road under influence of drink contrary to Sec. 15(1) Road Traffic Act 1930."

5. Rule of Procedure 35(B) is complied with.

6. The summary of evidence is read.

7. The Proseeutor files manuscript statement in lieu of AFB 296 and certified copy of M.F.M. 6.

8. The accused declined to make a statement in mitigation of sentence.

9. The accused calls the following witness as to character.

First Witness, Lieut. L.S. Pommet 2 Cdn Div Petrol Coy., having been duly sworn states: "I am the officer commanding the Section of the 2 Cdn Div Petrol Coy in which Pte. Owen is serving. He is a good soldier. I have never seen him drunk. He has not given any trouble. R.C.A.S.C. drivers are on their own a great deal and must be trusted. Owen was always dependable."

CERTIFIED A TRUE RECORD OF THIS
TRIAL, 28 day of November 1941.

Signed W.C. Peffers (President)

9

ABSTRACT OF EVIDENCE

The accused D-91736 Pte. Owens, P.J., 2 Cdn Div Petrol Company, R.C.A.S.C., a soldier of the Canadian Army (Active), is charged with:

> Committing a civil offence, that is to say, driving a motor vehicle on a road under the influence of drink contrary to Sec. 15 (1) Road Traffic Act 1930,
>
> in that he, on or about 14 Oct 41, on Pashley Road, in Ticehurst, did drive D.N.D. Vehicle C.L. 196681 when under the influence of drink to such an extent as to be incapable of properly controlling the same.

FIRST WITNESS

Percy Charles Hall, Engineer of Gas Works Cottage, Ticehurst, Special Police Constable, states:

"At approximately 10.20 p.m. on the 14th. October, 1941 I was standing at the Observer Post at the rear of Ticehurst Institute when I heard two lorries travelling from the village towards Hurst Green, the engines were racing as if in low gear and flat out. I heard a crash and ran out to see what had happened , I found one lorry in the hedge, and one partly in, opposite the Drill Hall, the driver of the lorry in the hedge was just getting out, the other driver was standing on the road, hanging on to his lorry, I could see both were underthe influence of drink. I went to fetch P.C. Latter, but couln't make anyone hear, on returning I phoned Flimwell Police, and at about 10.45 p.m. P.C. Riddle arrived on the scene. Sometime later P.C.Garrett arrived with members of the R.C.A.S.C. among them being Capt. Williams, he immediately placed both men under arrest and ordered P.C. Garrett to take them both to Hurst Green Police Station, and that the case would be dealt with by the Military"

11

...tness

Captain E.S.Williams, 2 Cdn Div Petrol Company, R.C.A.S.C., states:

"At about 10.45 p.m. on the 14th. October, 1941. I received information that two military vehicles were in an accident near the road junction approaching Ticehurst. I went to the scene with Lt. Hymes. and there saw two Canadian Army lorries, one of whichwas in the hedge on the nearside of the road. and down a bank, the other was standingon the road having just backed out of the ditch. There were two Police Officers in attendance and one Special Constable. I asked for the drivers of the lorries, and Ptes Owens and Contant, came forward, both were under the influence of liquor and Pte.Pwens was abusive. In view of the seriousness of the accident and the condition of the drivers I informed the police to take them into civil custody." I produce as exhibit "A" a sketch I drew at the time of the accident showing the relative position of the two lorries."

THIRD WITNESS

D-91107 Sgt.D.Tetro, 2 Cdn Div Petrol Company,R.C.A.S.C. states:

"Between 2300 and 2400 hrs. on 14 OCT 41, following a telephone call received by Capt.E.S.Williams, I was sent to the scene of a road accident in Ticehurst Two of our lorries were involved, CL 196681 driven by D-91736 Pte. Owens P.J. and CL 196678 driven by Pte.Contant.R.G. Pte.Owens lorry, which was leading, was in a gully,about six feet off the road.Idid not examine it. Pte Contant's lorry had apparently backed out and was halted on the near side of the road, the near side front wheel being about two feet off the road.Pte.Contant's lorry had a smashed radiator. The bumper and the radiator guard were damaged and twisted. The accused had been drinking. He was under the influence of liquor and unfit ti drive his lorry Sentries were posted near the lorries and the two drivers handed over to the Civil Police.

FOURTH WITNESS

E.C.W.Maxwell,M.R.C.S.,Robertsbridge (Police Surgeon) States:

"At or about 0030 hrs. 15 OCT 41, I examined the accused. He was under the influence of drink.

13

The accused was warned in accordance with R.P.4(e) and made the following statement:

"I confess that I am guilty of the above mentioned charge."

Certified that this abstract of evidence was taken by me in the field on 10th. NOV 41 in accordance with appendix "A" to D.R.O. 772.

(L.S.Pommet) Lieut.,
Officer detailed to take the Abstract.

15 Nov 8

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED

No. D-91736 Name: Pte.Owens,P.J. Unit: 2 Cdn Div Petrol Company,RCASC

Age: 33yrs 6 mos. Married or Single: ~~Single~~ MARRIED No.of Dependents: ONE CHILD

Date of attestation: 9 JAN 40

No. of days spent in Close Arrest (To date of Trial)

Civil: 1 Military: Hospital: Total:

Date of promotions, appointments and confirmation of rank,if any.

N.A.

John L Hodgson

(Officer i/c Records)
2 Cdn Div Petrol Company
R.C.A.S.C.

Date in the Field

this 28th day of Nov. 1941

No. D91736 Name Owens P | Sqn., Battery, or Company: 2 Cdn Div Pet Coy | Corps R.C.A.S.C. | Date of enlistment: 9.1.40 | G.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet: 2.3.40 | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc.: R.J. Dufresne Maj. | Character: Fair

M.F.M. 6 S.F.H. 122

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
St Helens Isle.	17.3.40	Pte		A.W.L. from 2245 hrs 17.3.40 to 0730 hrs 18-3-40 AA Sec 15(1)	Sgt Cooke L/Cpl Norcott	7 days det	19-3-40	R.J.Dufresne	forfits 1days pay under
			1st	Drunkenness AA Sec 19	CSM Baron Cpl.Lajeunesse		19-3-40	R.J.D. FRI/CNSF	
Camp Borden	5-9-40	Pte		W.O.A.S. 1. Breaking out of barracks AA Sec 10 (4)	Cpl Scott				
				2 A.W.L. from 2215 hrs 5.9.40 to 0730 hrs. 11-9-40	Pte Stuart	10 days det	11-9-40	R.J.Dufresne	
The above entries were brought f/f from previous sheet on completion of 6 mos service 9-7-40 in accordance with R.O. 71 CASF (o/s) the old sheet was destroyed.									
Aldershot	14-6-41	Pte		Disobeying a lawful command-did not get into his lorry when ordered by Capt A.W.Peters AA9	Capt A.W.Peters Sgt Tetro	14 days C.B. 21 days pay		R.J.Dufresne pay FRI CASF	Forf.21 days

(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	1-9-41	pte		Neglecting to obey a standing order A.A.11	Lieut D.R.Brodie	7 days C.B.	1.9.41	W.RUSSELL Capt.	

Certified True Copy.

(J.L.Hodgson) Lieut & Adjt.,
2 Cdn Div Petrol Coy.,
R.C.A.S.C.

4W-151.

Pte. Owen. R.J.

4

SCHEDULE.

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

Accused: M-50109 Pte (L/Cpl) Owen R.J., 35 Cdn Army Tps Comp 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	Not Guilty		R.P. 37 A.
2nd (Alternative)	Guilty	Guilty	R.P. 37 A.
3rd	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 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 42 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 imprisoned with hard labour for one year.

(Sgd) (GE Trischler) Lt-Col — Judge-Advocate, if any. 20 Feb 45. — Date awarded. (Sgd) (JD Learment) 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:

Confirmed.

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

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

(Sgd) (HM Elder) Brigadier

Date 4 Mar 45

Commanding DDMS FIRST CDN ARMY
Confirming Officer.

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

Accused.	Date.	Signature of Offr.
M-50109 Pte (L/Cpl) OWEN R.J. 35 Cdn Army Tps Comp Coy RCASC.	7 Mar 45	(DB Morrison) Major OC 35 Cdn Army Tps Comp Coy, RCASC

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

I certify that there are no ill-effects or irregularities to justify withholding confirmation of these proceedings.
A/Brigadier
A/A Cdn Corps
21 A Gp

4W-161

FIELD GENERAL COURT-MARTIAL

CFA96 (To Issue of AFA81 40/P & S/1608) 4/38B

Convened by Order of Brig H W Elder DDMS First Cdn Army dated 10 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) 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.
M-50109	Pte (L/Cpl)	Robert James	OWEN	35 Cdn Army Tps Comp Coy RCASC.

Certified true copy
[illegible] Major

D J A.
Cdn Sec 2 Can HQ, 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 19 & 20 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 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 ~~is~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~is~~ 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 ~~was~~ brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~was~~ 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	J D LEARMENT	Nth N S Highrs
Member	Capt	H T HARGRAVE MBE	2 Cdn Tk Tps Wksp RCAMC
Member	Capt	R R PINDER	9 Cdn Fds RCAMC
Judge-Advocate	Lt-Col	G E TRITSCHLER	AJAG First Cdn Army
Prosecutor	Capt	K M STIVER	ADJA First Cdn Army
Defending Offr	Lieut	R A BRIGGS	47 Cdn Army Tpt Coy RCASC.

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 D1 p 3.)

A8. The accused M-50109 Pte (L/Cpl) OWEN R.J. before arraignment make(s) (no) (a) plea ADJOURNMENT (See minute of Adjournment) (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 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 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.

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 40(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(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. *AFB 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(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. M-50109 Pte (L/Cpl) OWEN R.J., 35 Cdn Army Tps Comp Coy RCASC, 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, LARCENY, CONTRARY TO SECTION 2 OF THE LARCENY ACT, 1916.

in that he

In the Field, on or about 7 Jan 45, stole 27 cases of margarine, 1 sack of flour, 15 cases of cheese, 6 cases of coffee and 2 cases of coffee, being Army rations, public property.

SECOND CHARGE
(Alternative)
Sec 41
Army Act

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE THAT IS TO SAY, RECEIVING STOLEN GOODS, CONTRARY TO SECTION 33(1) OF THE LARCENY ACT, 1916.

in that he

In the Field, on or about 7 Jan 45, did receive 27 cases of margarine, 1 sack of flour, 15 cases of cheese, 6 cases of coffee and 2 cases of coffee, being Army rations, public property, knowing the same to have been stolen.

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, during the month of September 1944, when acting as a driver in 35 Cdn Army Tps Comp Coy, RCASC, was concerned in improper dealings in connection with Army rations, other than the rations referred to in the first and second charges.

In the Field

16 Feb 45.

D.B. Morrison
Major
Officer Commanding
35 Cdn Army Tps Comp Coy
RCASC.

appd under KR Cond 540
E B Bull Capt
ADJA-HQ 1 Cdn Army
10 Feb 45

To be tried by FGCM.

In the field.
16 Feb 45.

H M Elder Brig.
DDMS First Cdn Army.

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-50109	Pte (L/Cpl)		Robert James	OWEN	35 CdnArmy Tps Comp Coy 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 (~~xxxx~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) this date. endorsed by me, ~~xx by xx of xx my xxxx xx xxx~~ " 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(~~x~~), and to consist of the Offrs appointed or detailed hereunder.

~~xx xx xx xxxx xx xxxx xx xxxx xxxx xx xxxx xx xxxx x

MEDICAL OFFICER'S CERTIFICATE
(K.R. (CAF) para 557)

I certify that I have this morning examined No. M50109
Pte (Appl) Owen R.J. of 35 Cdn A Tps Comp Coy, RCASC, and in my opinion he is fit to undergo trial by Court-Martial.

FIELD
19 Dec 45

J.W. MacFarlane Capt
(Medical Officer)

MEDICAL OFFICER'S CERTIFICATE
(K.R. (CAF) para 557)

I certify that I have this morning examined No. M50109
Pte (Appl) Owen R.J. of 35 Cdn A Tps Comp Coy, RCASC, and in my opinion he is fit to undergo trial by Court-Martial.

FIELD
20 Dec 45

J.W. MacFarlane Capt
(Medical Officer)

The court satisfy themselves that Capt D J McAllister 35 Cdn Army Tps Comp Coy RCASC, is not available to serve owing to the exigencies of the service. Capt R R Pinder 9 Cdn FDS RCASC, waiting member, takes his place as a member of the Court.

ADJOURNMENTS

AT 1000 hrs ON 19 Feb 45 THE COURT ADJOURNED UNTIL 1015 hrs ON THE 20 Feb 45 ON THE 20 Feb 45 AT 1015 hrs THE COURT REASSEMBLE PURSUANT TO ADJOURNMENT, PRESENT THE SAME MEMBERS AS WHEN ADJOURNED.

Case of M-50109, Pte (L/Cpl) R.J.Owen, 35 Cdn Army Tps Comp Coy RCASC

Should the Court desire under RP 37(A) to record findings of guilty on the second and third charges respectively and findings of not guilty on the first charge the prosecution has no objection and further I am authorized to say that the Convening Authority concurs. The matter is, of course, in the Court's discretion entirely.

SUMMARY OF EVIDENCE

in the case of No. H-50109 Pte (L/Cpl) OWEN R.J. 35 Cdn Army Tps Comp Coy RCASC, Cdn Army Overseas,

BY DIRECTION OF THE COMMANDING OFFICER, THE EVIDENCE IS TAKEN ON OATH.

FIRST WITNESS

Capt J.D.F. Morrison, OIC No. 1 SIB, First Cdn Army, having been duly sworn, states:-

I am Capt J.D.F.Morrison, OIC No. 1 SIB, First Cdn Army.

At 1530 hours on 7 Jan 45, while conducting investigations into alleged trafficking of government rations, I had occasion to follow and check a truck driven by Regimental No. H-50109 L/Cpl Owen R.J., the accused here. The check took place at Ordegem in Belgium and L/Cpl Owen had in the rear of his truck the following quantities of government rations:-

27 cases of margarine,
1 sack of flour,
15 cases of cheese,
6 cases of coffee, and
2 other cases of coffee.

I recognized these as government rations. They were marked RASC rations. L/Cpl Owen was placed under arrest by Regimental No. U-1913 Sgt Sutherst R.S. and he was cautioned by Sgt Sutherst. L/Cpl Owen was accompanied by Pte Mastromattee in the truck. No statement was made to me at the time of arrest but the accused later made a statement to Sgt Sutherst. L/Cpl Owen had no authorization for the use of the vehicle and had no authority to be in the area where he was arrested. The place where the accused was arrested was a small village occupied solely by civilians and no soldiers were stationed there.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS.

J.D.F. Morrison

RECORD EVIDENCE

No. U-1913, Sgt Sutherst, R.S., No. 1 SIS, First Cdn Army, having been duly sworn, states:-

I am U-1913, Sgt Sutherst, R.S., No. 1 SIS, First Cdn Army.

On the 7 Jan 45 about 1530 hours in company with Capt Morrison I was on duty in Oordegem, Belgium, on black market activities. At this time we had occasion to stop and check B-50109 L/Cpl Owen, R.J., and B-109319 Pte Mantromatteo M., both of No. 35 Cdn Army Tps Coy Coy. At the time Owen, the accused, was the driver of a 60 cwt Cdn military truck belonging to his unit. I inspected the truck and found it was loaded with 27 cases of margarine, 8 cases of coffee, 15 cases of cheese and 1 sack of flour. This was all military property and bore military marks. I asked Owen to account for the property and what he was doing in this area. He said the stuff belonged to the boys in the platoon. He was going to sell it to a civilian he stated. I cautioned him and told him he would be arrested and he made no reply. He was taken to Smetlede Detachment of No. 1 SIS. Later that afternoon I accompanied L/Cpl Owen and Capt Morrison to a house in Baboger where Owen pointed out the house as the place where he was going to dispose of the property.

On the 9 Jan 45 I saw L/Cpl Owen at Smetlede Detachment No. 1 SIS again. I cautioned him in the following manner, "You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be used as evidence." I asked him if he wished to make a statement concerning the property found on his truck. He expressed willingness and made a statement under caution which I reduced to writing. The statement was read to him, he was allowed to read the statement, after which he signed the statement. This statement I now produce.

QUESTIONED BY THE ACCUSED:

Q. Did you when you picked me up ask me for the permission for the vehicle to be down there?

A. No, I don't think I did. I asked you what authority you had for being in the district.

Q. What was my answer?

A. I believe,.....I am not quite sure to tell you the truth.

U-1913 Sgt Sutherst R.S.

The statement referred to in the evidence of the above witness is attached hereto as Exhibit "A".

THIRD
EXTRACTS

No. B-84495 Sgt Lawson E.J. "B" Platoon 35 Cdn Army Tps Comp Coy RCASC, having been duly sworn states:

I know the accused, L/Cpl Owen, he is a member of "B" Platoon 35 Cdn Army Tps Comp Coy RCASC.

On 7 Jan 45, the accused was going to Wetteren to pick up Sgt Hyde who was there on 24 hours. I spoke to the accused and told him that as he was going to Wetteren, if he wished, he could take anything with him that the boys had obtained at the BSD and he agreed to do so. Cpl Rau and I obtained 10 cases of cheese and 2 cases of coffee from the checker at 5d BSD. These were Gov't rations. Later that morning the accused told me that these had been placed on his lorry. He drove me to 163 DID and from there he proceeded on his own. He said he was going to Wetteren. In a previous conversation held at BSD the same day with the accused, it was agreed that he was to get 10 percent of anything that was on his vehicle regardless of who put it there.

Elle

CROSS-EXAMINED BY THE ACCUSED:

Q. To your knowledge, did I know anything about Cpl Rau being in on that deal.

A. I think going up in the vehicle I mentioned to you that Cpl Rau would purchase some rations with a watch and some money of his.

Q. At the BSD, did you not come to me and say the cheese and coffee were coming out on Pte Brummitt's lorry.

A. I think I remember telling you the cheese was coming out on Brummitt's lorry, but that is all. I did not know what lorry the coffee was put on.

Q. Did I tell you I was going to Wetteren or Westrum.

A. I can't remember, but it was in that general area.

B84495 Sgt E.J. Lawson
Witness.

No. K.69411, Pte Brummitt, H.R., 35 Gdn Army Tps Comp Coy RCASC, having been duly sworn, states:-

I know the accused, L/Cpl Owen.

On 7 Jan 45 I procured by purchase from a checker at 5 BSD 5 cases of cheese and this was put on my lorry. There was also 10 cases of cheese and 2 cases of coffee belonging to Sgt Lawson on my vehicle. After leaving the BSD I pulled up to the end of the convoy that was being formed up by Cpl Rau. I was told by Cpl Rau to take the 10 of cheese and 2 coffee to the buckshee lorry which was at the front of the convoy. I drove my truck up to the front of the convoy and I unloaded the 15 cases of cheese and 2 cases of coffee on to L/Cpl Owen's truck, which was the buckshee truck. L/Cpl Owen was present and helped me load the goods. These cases were government property. I had no conversation with the accused.

CROSS-EXAMINED BY THE ACCUSED:-

Q Did I ask you how much you wanted per case for your cheese?

A I think you did ask me something about that.

K69411 Pte Brummitt H.R.

FIFTH WITNESS

No. B-71108 Pte Brien J.J. "B" Platoon, 35 Cdn Army Tps Comp Coy RCASC, having been duly sworn states:

I know the accused L/Cpl Cuen, he is a member of "B" Platoon 35 Cdn Army Tps Comp Coy RCASC.

On the 7 Jan 45 I went to 58 BSD with the detail to pick up properly issued rations and found in my possession 27 cases of margerine extra and I pulled out and I found out who was driving the "Ruckshee" lorry. Pte(L/Cpl) Cuen was driving it. I then told the accused that I had 27 cases of margerine on Lafond's lorry and then I proceeded in the convoy. I told the accused to get the 27 cases of margerine from Lafond's wagon. This margerine was Gov't property.

THE ACCUSED DECLINES TO CROSS-EXAMINE THE WITNESS.

Witness

SIXTH WITNESS

No. K-66759 Pte Fursberg H. "B" Platoon 35 CdnArmy Tps Comp Coy RCASC, having been duly sworn states:

I know the accused L/Cpl Cuen, he is a member of "B" Platoon 35 Cdn Army Tps Comp Coy RCASC.

On 7 Jan 45 when I came out of BSD with my lorry with a load of properly issued rations and one extra bag of flour that was on my lorry. This extra bag of flour I bought from the checker at 58 BSD. It was Gov't flour. When I came out of the BSD the accused and I took the bag of flour and put it on the accused's lorry. I asked the accused if his was the extra lorry. He said it was. I then drove away with the regular convoy. I never saw the accused again until I came to the platoon under arrest.

CROSS-EXAMINED BY THE ACCUSED:

Q. When we had the flour on my lorry did I not ask you what price you wanted for the flour.

A. Yes.

Q. What was your price.

A. You promised me 1200 francs.

Witness.

No. B-109319, Pte (L/Cpl) Mastromatteo, M., 35 Cdn Army Tps Comp Coy RCASC, having been duly sworn, stated:-

I am B-109319, Pte (L/Cpl) Mastromatteo, M., and I am also known as Masters. I know the accused, L/Cpl Owen.

On 7 Jan 45 I found out that the accused was driving to Watteren. As I wished to go to see a girl friend there I arranged with the accused to go down with him. After I delivered my supplies to 16 DID the accused picked me up and we proceeded to Watteren. I was in the cab with him. We stopped in front of my girl friend's house and as I was getting out Sgt Rutherst approached me and questioned me. Capt Morrison was with Sgt Rutherst. I never knew what, if anything, was in the vehicle as the tarp was tied down.

THE ACCUSED DECLINED TO CROSS-EXAMINE THIS WITNESS.

M. Mastromatteo

No. L-6900, Pte Edworthy, T.E., 35 Cdn Army Tps Coy RCASC, having been duly sworn, states:-

I know the accused, L/Cpl Owen.

On 7 Jan 45 I got 6 cases of coffee from a checker at 58 BPD. These were government rations as far as I recall. These cases of coffee were on my lorry but I did not put them on the lorry or drive it. I drove some other person's lorry back to the lines because I had a sore arm and did not wish to drive to the BPD. As far as I recall the coffee was buckshee. I told Pte Lafond that there were 6 cases of coffee on my lorry and to take them to the buckshee lorry if there was one and if not to take them to our own kitchen.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS.

L/100 Pte Edworthy T.E.

THE ACCUSED WAS CAUTIONED AS FOLLOWS:-

Q Do you wish to make any statment 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 No. I have nothing to say at the present time.

[illegible]

THE ACCUSED DOES NOT CALL ANY WITNESSES.

I certify that the foregoing Summary of Evidence, consisting of 5 pages, was taken down in my presence and in the presence of the accused and that RP 4 (C), (D), (E) and (F) have been complied with.

In the Field
6 & 9 Feb 45

E.R.Bull

(E.R.Bull) Capt
The Seaforth Highrs
Officer detailed to take the Summary of Evidence.

STATEMENT of M-50109 L/Cpl Owen R.J.
35 Cdn Army Tps Comp Coy R.C.A.S.C.
Employed as 21/c 7 Sec "B" Platoon
Driver

Exhibit "A" in the case of
M-50109 L/Cpl Owen R.J.

"E.B. Bull" Capt
Officer det totake the Summary of
Evidence.

I have been cautioned that I am not obliged to say anything unless I wish to do so, but that anything I do say will be taken down in writing and may be given in evidence. I understand this caution and made the following statement of my own free will.

Signed: R.J. OWEN.

On Saturday, 6 Jan45, I returned to my Platoon H.Q. at about 1515 hours, after picking up leave personnel in Brussels. I was told by the clerk in the Orderly room, Pte STEVENSON, that S/t HYDE had left a message with him to the effect that I was to pick up Sgt HYDE at 3 a.m. Monday 8 Jan 45, in WETTEREN. I didn't know anything about this so paid no attention to it, as I figured there was some mistake.

Sunday morning, 7 Jan 45, as the Platoon Supply Convoy was pulling out from the Platoon lines to pick up supplies, I was handed a written message by Pte McINNIS, in the presence of Sgt LAWSON, to the effect that I was to pick up Sgt HYDE in WETTEREN at 3 a.m. Monday morning. The message was signed by Sgt HYDE and stated that I was to go straight to ALOST from the supplies. I was driving a truck on this detail and Sgt LAWSON, who was in charge of the convoy, was riding with me. He asked to see the note that was handed to me and on reading it said, "Seeing that you are going down there, you might as well take the "Buckshee" load, we'll leave you a spare vehicle", I said O.K., it was all right with me. Sgt LAWSON asked me if xxxxxxxx I knew of a place where I could get rid of the load. I told him I had a place in mind where I could get rid of it all. LAWSON asked me if the place I had in mind was in WETTEREN. I said "No, it wasn't". He then said something to the effect that WETTEREN was getting too hot, but I can't remember the exact words. This conversation took place whilst travelling from our Platoon lines at ST LEONARDUS to the supply Point at OUDENAARDE. The convoy consisted of 21 vehicles and arrived at the R.S.P. between 9.45 a.m. and 10 a.m. On arrival at this point Sgt LAWSON told me to pull my vehicle over to the side of the road and let the other veh pass me and line up for supplies. My vehwas number one in the convoy. I pulled over to the side of the roadand stopped. The convoy passed me and went lined up to draw the supplies. Sgt LAWSON got out of the vehicle and went to take charge of shooting the vehicles into the various sheds to draw supplies. About three quarters of an hour later Sgt LAWSON came to my truck and told me that he had two cases of coffee and ten cases of cheese for himself. He told mewhich lorry they would come out on, Pte BRUNSITT's R.S.P. LAWSON told me to drive him to his girl friend's place. This I did and he stayed there. LAWSON's girl friend lives on the road that leads to the R.S.P. about half a mile away from the R.S.P. LAWSON told me I was to go and wait where the vehicles lined up after leaving the R.S.P. with the supplies, and that the vehicles that had buckshee supplies would stop at my vehicel and thransfer the stuff. After I was loaded I was to pick him up. I went to the spot where LAWSON told me to go and waited. Iwaited about five minutes and the vehicles from my Platoon came along. Pte BRUNSITT's R.S.P. vehicle was the first to stop beside me. BRUNSITT and Itook 2 cases of coffee and fifteen cases of cheese from hisvehicle and loaded it on to mine. The two cases of coffee and ten cases of cheesebelonged to Sgt LAWSON, whilst the remaining five cases of cheesebelonged to Pte BRUNSITT. BRUNSITT drove his vehicle away from mine and lined up. The next vehicle that had buckshee stuff drove up to my truck. This vehicle was driven by Pte FORSBERG. I helped FORSBERG to unload one sack of flour from his truck to mine. FORSBERG only had this one sack of flour. He then drove away and lined up behind BRUNSITT. Pte Edworthy's truck was the next to pull up beside me. He had six cases ofcoffee, which we transferred to my truck. He then moved off into the line up. The next vehicle was drivenn by Pte BRIAN and he had 27 cases of margerine, thiswas loaded on my truck. Pte BRIAN pulled into the convoy line and

Continuation of Statement
of M-50109 L/Cpl OWEN R.J.

[illegible]e and the convoy moved off. Allthe vehicles that had buckshee stuff were at the rear of the convoy. After the convoy pulled away I went and Picked up Sgt LAWSON and we then drove to 163 DID at REMENTHALS where we unload our supplies. Ileft Sgt LAWSON there and picked up L/Cpl MASTERS L/Cpl MASTERS knew nothing about the load I had and was xxx only riding with me in order to see his girl friend who lives near HETTEREN He had heard that I was going to WETTEREN topick up Sgt HYDE,so asked me if he could come along. After each man had loaded his buckshee stuff onto my vehicle, he told me what he expected to receive when I sold the stuff. BRIAN did not tell me the price of his because he just shifted his load and left. I was told later by one of the men the price of BRIAN's load, but Ican't remember this man. The prices told to me were as follo we:-

Coffee	6,000	frs per case
Cheese	3,000	frs per case
Flour	17,200	Frs per sake
Margerine	3,000	frs per case.

I was told toreceive 10 percent of the money obtained from the sale of all the stuff. After picking up L/Cpl MASTERS I started out for WESTREM, where I was going to try and sell the stuff. L/C MASTER'sgirl friend's home was on the way to WESTREM and I dropped him first. It was here that I was arrested by Captain MORRISON of the Special Investigation Section. This was the first load that I transported fot the boys in the Platoon. During the monght of Sept 44 I sold four sacks of sugar to the man in WESTREM where I was going to sell the load that I had when I was arrested. This man lives at the youse I pointed out to Captain MORRISON on Sunday, 7 Jan 45. I don't know the man's name but I met him when I was stateioned in WESTREM during August and Sept 44. I first met himju st outside our camp and he told me he would uy any amoung ofCorned beef,rice, coffee margerine and all other food stuffs. This man is a small man, about5'6" agen between 35yrs and 40 yrs., and speaks goodEnglish. He told me he had lived in Ontario and United States for 12 years.

I know there has been truck loads of food stuffs delivered to people in WETTEREN by members of my platoon, but don't know the men concerned or where they deliver the stuff to. Ican honestly say that this is the first truck load of food stuffs, or for that matter any stuff,that I have been concerned with. And once again Iwould like to say that L/Cpl MASTERS has nothing todowith this business.

I have no knowledge of how the buckshee foodstuffs are obtained by the boys in our platoon, but I know it is impossible to steal such a large amount of supplies from the B.S.D. I don't think there is anything further I can tellyou, This statement has beenread over to me and it is true to the best of my knowledge.

Signed R.J. OWEN.

Statement taken down in writing read over and signature witnessed by R. Sutherst, Sgt SO. 1 S.I.S 9 Jan 1945.

NOTICE PURSUANT TO R.P. 76

TO: M-50109, Pte (L/Cpl) Owen, R.J.

35 Cdn Army Tpe Comp Coy RCASC

TAKE NOTICE that the prosecutor intends to call as a witness at your trial by FGCM Capt S.H. Schlesenger, 1d CRASC(SC), who will say:-

1. He is familiar with the set up and organization of a BSD;

2. All supplies and rations in BSDs are public property;

3. No one employed or serving in a BSD has authority to give or sell any such supplies or rations to anyone.

16 Feb 45

[signature] Capt

Prosecutor

E - 3 STATEMENT IN MITIGATION in the Case of M-50109, Pte (L/Cpl) Owen, R.J., 35 Can Army Tps Comp Coy RCASC

Now we have a Lance Corporal with 4 years service and only 1 mark on his conduct sheet, which was for being out after curfew in Ghent. He is wearing a good conduct stripe. In the evidence read by the Court he has not at anytime had any dealings himself in rations except the time the Sgt instructed him to use his vehicle to carry rations that had been arranged for by the Sgt and others in the platoon. His one fault is that he did drive the lorry for the Sgt who disposed of the rations.

There is little more that I can say. He is a Lance Corporal and subject to the commands of the Sgt. When you are considering sentence I would ask you to take a broad view of it and deal very very leniently with him.

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)
M-50109	L/Cpl	OWEN, R.J.	35 Cdn. A Tps. Comp. 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 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

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 11 ....1... 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 .....

beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for nil.. days in civil custody; and for 40... days in military custody, making a total of .40.... days of which nil.. days were spent in hosp.

5. The present age of the accused is ..26.....

6. The date of his attestation is 26 Nov. 40.....

7. The service which the accused is allowed to reckon is 4 yrs. 89 days.....

8. The accused is in possession of #

C V S M and 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	L/Cpl ..... 9 Aug. 44..
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.

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

...y Form S.296 (Wm)

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)
M-50109	L/Cpl	OWEN, R.J.	35 Cdn. A Tps. Comp. 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 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 AA Sep 11 ..... 1 ... 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 .....

beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charge for nil days in civil custody; and for 40 days in military custody, making a total of 40 days of which nil days were spent in hosp.

5. The present age of the accused is 26 .....

6. The date of his attestation is 26 Nov. 40 .....

7. The service which the accused is allowed to reckon is 4 yrs. 88 days .....

8. The accused is in possession of #

C V S M and 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	L/Cpl ..... 8 Aug 44 ..
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

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 ...16..... day of Feb 45.....

(DM Eshold) Capt & Adjt
35 Cdn Army Tps Comp Coy, RCASC

No. M80109 Name OWEN R J | Sqn., Battery, or Company | Corps RCASC | Date of enlistment 26NOV40 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 122) 40/P & /3136 (2965)

Date of last entry in Company Conduct Sheet nil | No. and date of last drunk nil | Period not reckoning towards freedom from extra fine N/A | 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
				2nd sheet destroyed on compl. of 2 yrs ser. without entries, 20Nov42.					
AWARDED THE CANADIAN VOLUNTEER SERVICE MEDAL AND CLASP w.e.f. 15 JAN 44 (Field) Field 17Oct44 L/Cpl				AA Sec 11 - NEG. TO OBEY PART I Os Documentary Evidence - Was abroad in GHENT after Mil. Curfew		Severley Rep 20Oct44 Remanded		Major D B Morrison	
				CERTIFIED TRUE COPY (Exhibit "Z") (JDL) (D E Echold) Capt A Adjt 35 Cdn Army Tps Comp Coy RCASC					

(P.T.O.)

RECORDED AT CMHQ IN AB 160 4W-157

RECEIVED 2 AUG 1945 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA81) 40/P & S/1808 (46-05)

4/388

Convened by Brig H M Elder XXX Comd DDMS First Cdn Army dated 16 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) 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.
M-50109	Pte (L/Cpl)	Robert James	GWEN	35 Cdn Army Tps Comp Coy RCASC

PROCEEDINGS REVIEWED 27 Mar 45

R. Lennan Lt-Col. REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in The Fd in (country) HOLLAND on (date(s)) 19 20 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 24/49

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 ~~as~~ 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(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(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 D LEARMENT	Nth N S Highrs
Member	Capt	H T HARGRAVE MBE	2 Cdn Tk Tps Wksp RCEME
Member	Capt	R R PINDER	9 Cdn FDS RCAMC
Judge-Advocate	Lt-Col	G E TRITSCHLER	AJAG First C dn Army
Prosecutor	Capt	K M STIVER	ADJA First Cdn Army
Defending Offr	Lieut	R A BRIGGS	47 Cdn A Tpt Coy RCASC

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 M-50109 Pte (L/Cpl) GWEN R.J., before arraignment make(s) (no) ~~(or)~~ plea ADJOURNMENT (See minute of Adjournment)(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. See statement of prosecutor attached marked A-9.

(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 RP* 94, 96.

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

B1. ~~The President~~ 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 I do .....[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 thereof 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) (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(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 4 and Ex 5 respectively.(2)

(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 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 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 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(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 : M-50109 Pte (L/Cpl) Owen R.J. 35 Cdn Army Tps Comp 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	Not Guilty	Not Guilty	R.P. 37 A
2nd (Alternative)	Guilty	Guilty	R.P. 37 A
3rd	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 loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (1st)~~ (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 42 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 imprisoned with hard labour for one year.

(Sgd) [signature] Lt/col — Judge-Advocate, if any. 20 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 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) [initials]

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

(Sgd) [signature] Brig.

Date 4 Mar 45

Commanding DDMS FIRST CDN ARMY

Confirming Officer.

I certify that there are no illegalities or irregularities to justify withholding confirmation of these proceedings.

[signature] Major

DJ Adv. Cdn. Corps Tps Sch. 21 A Gp

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

Accused.	Date.	Signature of Offr.
M-50109 Pte (L/Cpl) Owen R.J. 35 Cdn Army Tps Comp Coy RCASC	7 Mar 45	[signature] Monison Maj OC 35 Cdn Army Tps Comp Coy RCASC

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CHARGE SHEET

Robert James DBM

The accused No. M-50109 Pte (L/Cpl)/OWEN ..., 35 Cdn Army Tps Comp Coy RCASC, 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, LARCENY, CONTRARY TO SECTION 2 OF THE LARCENY ACT, 1916.

in that he

In the Field, on or about 7 Jan 45, stole 27 cases of margarine, 1 sack of flour, 15 cases of cheese, 6 cases of coffee and 2 cases of coffee, being Army rations, public property.

SECOND CHARGE
(Alternative)
Sec 41
Army Act

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE THAT IS TO SAY, RECEIVING STOLEN GOODS, CONTRARY TO SECTION 33(1) OF THE LARCENY ACT, 1916.

in that he

In the Field, on or about 7 Jan 45, did receive 27 cases of margarine, 1 sack of flour, 15 cases of cheese, 6 cases of coffee and 2 cases of coffee, being Army rations, public property, knowing the same to have been stolen.

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, during the month of September 1944, when acting as a driver in 35 Cdn Army Tps Comp Coy, RCASC, was concerned in improper dealings in connection with Army rations, other than the rations referred to in the first and second charges.

In the Field

16 Feb 45.

D.B. Morrison
Major
Officer Commanding
35 Cdn Army Tps Comp Coy
RCASC.

Appd under K R Class 540
[illegible] Capt
ADJA - HQ Cdn Army
10 Feb 45

To be tried by FGCM

In the Field

16 Feb 45

H. W. Elder Brig
DDMS FIRST CDN ARMY

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.
M50109	Pte	(L cpl)	Robert James	OWEN	35 Cdn A Tps Comp Coy 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*) this date 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 in 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	J D Learment	Nth NS Highrs
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Captain	H T Hargrave MBE	2 Cdn Tk Tps Wksp RCEME
Captain	D J McAllister	36 Cdn A Tps Comp Coy RCASC
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

Captain	R R Pinder	9 Cdn FDS RCAMC
(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

Lt col	G E Tritschler	AJAG HQ First Cdn Army
(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in HOLLAND (Country.)

H. M. Elder (Signed personally. RP 105 fn 2.) (H M Elder)

Brigadier (Rank.)

Dat 16 Feb 45

Commanding DDMS First Cdn Army
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 3) 40/P & S/1697 (6143)

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

MEDICAL OFFICER'S CERTIFICATE
(K.R. (CAN) para 559)

M.50109

I certify that I have this morning examined No. L/Cpl CWEN, R.J. of 35 Cdn A Tps Coop Coy, RCASC, and in my opinion he is fit to undergo trial by Court-Martial

FIELD

19 Feb 45

(Medical Officer)

Joh

MEDICAL OFFICER'S CERTIFICATE
(K.R. (CAS) para 5?7)

I certify that I have this morning examined No. M.50109

HCpl. Owen R.J. of 35 Cdn A Tps Comp Coy, RCASC, and in my opinion he is fit to undergo trial by Court-Martial.

FIELD

20 FEB 45

J W MacFarlane Capt
(Medical Officer)

The Court satisfy themselves that Capt D J McAllister 56 Gdn Army Tpe Comp Coy [illegible], is not available to serve owing to the exigencies of the service. Capt R [illegible] Pinder 9 Gdn [illegible], [illegible], waiting member, takes his place as a member of the Court.

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ADJOURNMENTS

"AT 1000 hrs ON 19 Jan 46 THE COURT ADJOURNED UNTIL 1015 hrs ON THE 20 Jan 46, ON THE 20 Jan 46 AT 1015 hrs THE COURT REASSEMBLE PURSUANT TO ADJOURNMENT, PRESENT THE SAME MEMBERS AS WHEN ADJOURNED".

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Case of M-50109, Pte (L/Cpl) R.J.Owen, 35 Cdn Army Tps Comp Coy RCASC

Should the Court desire under RP 37(A) to record findings of guilty on the second ~~and third~~ charge, ~~respectively~~ and findings of not guilty on the first charge the prosecution has no objection and further I am authorized to say that the Convening Authority concurs. The matter is, of course, in the Court's discretion entirely.

Exhibit "B"

Joh

SUMMARY OF EVIDENCE

in the case of No. M-50109 Pte (L/Cpl) OWEN Robert James, 35 Cdn Army Tps Comp Coy RCASC, Cdn Army Overseas,

BY DIRECTION OF THE COMMANDING OFFICER, THE EVIDENCE IS TAKEN ON OATH.

FIRST WITNESS

Capt J.D.F. Morrison, OIC No. 1 SIS, First Cdn Army, having been duly sworn, states:-

I am Capt J.D.F.Morrison, OIC No. 1 SIS, First Cdn Army.

At 1530 hours on 7 Jan 45, while conducting investigations into alleged trafficking of government rations, I had occasion to follow and check a truck driven by Regimental No. M-50109 L/Cpl Owen R.J., the accused here. The check took place at Ordegen in Belgium and L/Cpl Owen had in the rear of his truck the following quantities of government rations:-

27 cases of margarine,
1 sack of flour,
15 cases of cheese,
6 cases of coffee, and
2 other cases of coffee.

I recognized these as government rations. They were marked RASC rations. L/Cpl Owen was placed under arrest by Regimental No. U-1913 Sgt Sutherst R.S. and he was cautioned by Sgt Sutherst. L/Cpl Owen was accompanied by Pte Mastromatteo in the truck. No statement was made to me at the time of arrest but the accused later made a statement to Sgt Sutherst. L/Cpl Owen had no authorization for the use of the vehicle and had no authority to be in the area where he was arrested. The place where the accused was arrested was a small village occupied solely by civilians and no soldiers were stationed there.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS.

J.D.F. Morrison Capt

SECOND WITNESS

No. U-1913, Sgt Sutherst, R.S., No. 1 SIS, First Cdn Army, having been duly sworn, states:-

I am U-1913, Sgt Sutherst, R.S., No. 1 SIS, First Cdn Army.

On the 7 Jan 45 about 1530 hours in company with Capt Morrison I was on duty in Oordegem, Belgium, on black market activities. At this time we had occasion to stop and check M-50109 L/Cpl Owen, R.J., and D-109319 Pte Mastromatteo M., both of No. 35 Cdn Army Tps Comp Coy. At the time Owen, the accused, was the driver of a 60 cwt Cdn military truck belonging to his unit. I inspected the truck and found it was loaded with 27 cases of margarine, 8 cases of coffee, 15 cases of cheese and 1 sack of flour. This was all military property and bore military marks. I asked Owen to account for the property and what he was doing in this area. He said the stuff belonged to the boys in the platoon. He was going to sell it to a civilian he stated. I cautioned him and told him he would be arrested and he made no reply. He was taken to Smetlede Detachment of No. 1 SIS. Later that afternoon I accompanied L/Cpl Owen and Capt Morrison to a house in Babegem where Owen pointed out the house as the place where he was going to dispose of the property.

On the 9 Jan 45 I saw L/Cpl Owen at Smetlede Detachment No. 1 SIS again. I cautioned him in the following manner, "You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be used as evidence." I asked him if he wished to make a statement concerning the property found on his truck. He expressed willingness and made a statement under caution which I reduced to writing. The statement was read to him, he was allowed to read the statement, after which he signed the statement. This statement I now produce.

QUESTIONED BY THE ACCUSED:

Q Did you when you picked me up ask me for the permission for the vehicle to be down there?

A. No, I don't think I did. I asked you what authority you had for being in the district.

Q. What was my answer?

A. I believe,.....I am not quite sure to tell you the truth.

U-1913 Sgt Sutherst R.S.

The statement referred to in the evidence of the above witness is attached hereto as Exhibit "A".

THIRD WITNESS

No. B-84495 Sgt Lawson E.J. "B" Platoon 35 Cdn Army Tps Comp Coy RCASC, having been duly sworn states:

I know the accused, L/Cpl Owen, he is a member of "B" Platoon 35 Cdn Army Tps Comp Coy RCASC.

On 7 Jan 45, the accused was going to Wetteren to pick up Sgt Hyde who was there on 24 hours. I spoke to the accused and told him that as he was going to Wetteren, if he wished, he could take anything with him that the boys had obtained at the BSD and he agreed to do so. Cpl Rau and I obtained 10 cases of cheese and 2 cases of coffee from the checker at 58 BSD. These were Gov't rations. Later that morning the accused told me that these had been placed on his lorry. He drove me to 163 DID and from there he proceeded on his own. He said he was going to Wetteren. In a previous conversation held at BSD the same day with the accused, it was agreed that he was to get 10 percent of anything that was on his vehicle regardless of who put it there.

CROSS-EXAMINED BY THE ACCUSED:

Q. To your knowledge, did I know anything about Cpl Rau being in on that deal.

A. I think going up in the vehicle I mentioned to you that Cpl Rau would purchase some rations with a watch and some money of his.

Q. At the BSD, did you not come to me and say the cheese and coffee were coming out on Pte Brummitt's lorry.

A. I think I remember telling you the cheese was coming out on Brummitt's lorry, but that is all. I did not know what lorry the coffee was put on.

Q, Did I tell you I was going to Wetteren or Westrum.

A. I can't remember, but it was in that general area.

B84495 Sgt E.J. Lawson
Witness.

FOURTH WITNESS

No. K-69411, Pte Brummitt, R.B., 35 Cdn Army Tps Comp Coy RCASC, having been duly sworn, states:-

I know the accused, L/Cpl Owen.

On 7 Jan 45 I procured by purchase from a checker at 58 BSD 5 cases of cheese and this was put on my lorry. There was also 10 cases of cheese and 2 cases of coffee belonging to Sgt Lawson on my vehicle. After leaving the BSD I pulled up to the end of the convoy that was being formed up by Cpl Rau. I was told by Cpl Rau to take the 10 of cheese and 2 coffee to the buckshee lorry which was at the front of the convoy. I drove my truck up to the front of the convoy and I unloaded the 15 cases of cheese and 2 cases of coffee on to L/Cpl Owen's truck, which was the buckshee truck. L/Cpl Owen was present and helped me load the goods. These cases were government property. I had no conversation with the accused.

CROSS-EXAMINED BY THE ACCUSED:-

Q Did I ask you how much you wanted per case for your cheese?

A I think you did ask me something about that.

K69411 Pte Brummitt R

FIFTH WITNESS

No. D-71104 Pte Brian J.J. "B" Platoon, 35 CdnArmy Tps Comp Coy RCASC, having been duly sworn states:

I know the accused L/Cpl Owen, he is a member of "B" Platoon 35 CdnArmy Tps Comp Coy RCASC.

On the 7 Jan 45 I went to 58 BSD with the detail to pick up properly issued rations and found in my possession 27 cases of margerine extra and I pulled out and I found out who was driving the "Buckshee" lorry. Pte(L/Cpl) Owen was driving it. I then told the accused that I had 27 cases of margerine on Lafond's lorry and then I proceeded in the convoy. I told the accused to get the 27 cases of margerine from Lafond's wagon. This margerine was Gov't property.

THE ACCUSED DECLINES TO CROSS-EXAMINE THE WITNESS.

D71104 Pte Brian J.J.
Witness

SIXTH WITNESS

No. K-66759 Pte Forsberg E. "B" Platoon 35 CdnArmy Tps Comp Coy RCASC, having been duly sworn states:

I know the accused L/Cpl Owen, he is a member of "B" Platoon 35 CdnArmy Tps Comp Coy RCASC.

On 7 Jan 45 When I came out of BSD with my lorry with a load of properly issued rations and one extra bag of flour that was on my lorry. This extra bag of flour I bought from the checker at 58 BSD. It was Gov't flour. When I came out of the BSD the accused and I took the bag of flour and put it on the accused's lorry. I asked the accused if his was the extra lorry. He said it was. I then drove away with the regular convoy. I never saw the accused again until I came to the platoon under arrest.

CROSS-EXAMINED BY THE ACCUSED:

Q. When we had the flour on my lorry did I not ask you what price you wanted for the flour.

A. Yes.

Q. What was your price.

A. You promised me 1200 francs.

K66759 Pte E. Forsberg
Witness.

SEVENTH WITNESS

No. D-109319, Pte (L/Cpl) Mastromatteo, M., 35 Cdn Army Tps Comp Coy RCASC, having been duly sworn, states:-

I am D-109319, Pte (L/Cpl) Mastromatteo, M., and I am also known as Masters. I know the accused, L/Cpl Owen.

On 7 Jan 45 I found out that the accused was driving to Wetteren. As I wished to go to see a girl friend there I arranged with the accused to go down with him. After I delivered my supplies to 163 DID the accused picked me up and we proceeded to Wetteren. I was in the cab with him. We stopped in front of my girl friend's house and as I was getting out Sgt Sutherst approached me and questioned me. Capt Morrison was with Sgt Sutherst. I never knew what, if anything, was in the vehicle as the tarp was tied down.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS.

M. Mastromatteo

EIGHTH WITNESS

No. L-8900, Pte Edworthy, T.E., 35 Cdn Army Tps Comp Coy RCASC, having been duly sworn, states:-

I know the accused, L/Cpl Owen.

On 7 Jan 45 I got 6 cases of coffee from a checker at 58 BSD. These were government rations as far as I recall. These cases of coffee were on my lorry but I did not put them on the lorry or drive it. I drove some other person's lorry back to the lines because I had a sore arm and did not wish to drive to the DID. As far as I recall the coffee was buckshee. I told Pte Lafond that there were 6 cases of coffee on my lorry and to take them to the buckshee lorry if there was one and if not to take them to our own kitchen.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS.

L8900 Pte Edworthy T.E.

THE ACCUSED WAS CAUTIONED AS FOLLOWS:-

Q Do you wish to make any statment 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 No/I have nothing to say at the present time.

M 50109 L/Cpl. Owen R.J.

THE ACCUSED DOES NOT CALL ANY WITNESSES.

I certify that the foregoing Summary of Evidence, consisting of 8 pages, was taken down in my presence and in the presence of the accused and that RP 4 (C), (D), (E) and (F) have been complied with.

In the Field
6 & 9 Feb 45

E B Bull

(E.B.Bull) Capt
The Seaforth Highrs
Officer detailed to take the Summary of Evidence.

STATEMENT of M-50109 L/Cpl Owen R.J.
5 Cdn Army Tps Comp Coy R.C.A.S.C.
Employed as 2i/c 7 Sec "B" Platoon
Driver

Exhibit "A" in the case of
M-50109 L/Cpl Owen R.J.

#E.B. Bull" Capt
Officer det totake the S"mmary of
Evidence.

I have been cautioned that I am not obliged to say anything unless I wish to do so, but that anything I do saywill be taken down in writing and may be given in evidnece. I unders and this caution and made the following statement of my own free will.

Signed: R.J. OWEN.

On Saturday, 6 Jan45, I returned to my Platoon H.Q. at about 1815 hours, after picking up leave personnel in Brussels. I was told by the clerk in the Orderly room, Pte STEVENSON, that S t HYDE had left a message with him to the effect that I was to pick up Sgt HYDE at 3 a.m. Monday 8 Jan 45, in WETTEREN. I didn't know anything about this so paid no attention to it, as I figured there was some mistake.

Sunday morning, 7 Jan 45, as the Platoon Supply Convoy was pulling out from the Platoon lines to pick up supplies, I was handed a written message by Pte McINNIS, in the presence of Sgt LAWSON, to the effect that I was to pick up Sgt HYDE in WETTEREN at 3 a.m. Monday morning. The message was signed by Sgt HYDE and stated that I was to go straight to ALOST from the supplies. I was driving a truck on this detail and Sgt LAWSON, who was in charge of the convoy, was riding with me. He asked to see the note that was handed to me and on reading it said,"Seeing that you are going down there, you might as well take the "Buckshee" load, we'll leave you a spare vehicle", Isaid O.K., it was all right with me. Sgt LAWSON asked me if ~~xxxxxxxx~~ I knew of a place where I could get rid of the load. I told him I had a place in mind where I could get rid of it all. LAWSON asked me if the place I had in mind was in WETTEREN. I said "No, it wasn't". He then said something to the effect that WETTEREN was getting too hot, but I can't remember the exact words. This conversation took place whilst travelling from our Platoon lines at St LEONARDS to the supply Point at OISTERWIJK. The convoy consisted of 21 vehicles and arrived at the S.S.P. between 9.45 a.m. and 10 a.m. On arrival at this point Sgt LAWSON told me to pull my vehicle over to the side of theroad and let the other veh pass me and line up for supplies. My venwas number one in the convoy. I pulled over to the side of the raodand stopped. The convoy passed me and went lined up todraw the supplies. Sgt LAWSON got out of the vehicle and went to take charge of shooting the vehicles nto the various sheds to draw supplies. About three quarters of an hour later Sgt LAWSON came to my truck and told me that he had two cases of coffee and ten cases of cheese for himself. He told mewhich lorry they would come out on, Pte BRUMMITT's R.S. LAWSON told me to drive him to his girl friend's place. This I did and he stayed there. LAWSON's girl friend lives on the road that leads to the S.S.P. about half a mile away from the S.S.P. LAWSON told me I was to go and wait where the vehicles lined up after leaving the S.S.P. with the supplies,and that the vehicles that had buckshee supplies would stop at my vehicel and thransfer the stuff, After I was loaded I was to pick him up. I went to the spot where LAWSON told me to go and waited. Iwaited about five minutes and the vehicles from my Platoon came along. Pte BRUMMITT's R.S., vehicle was the first to stop beside me. BRUMMITT and Itook 2 cases of coffee and fifteen cases of cheese from hisvehicle and loaded it on to mine. The two cases of coffee and ten casesof cheesebelonged tosgt LAWSON, whilst the remaining five cases of cheesebelonged to Pte BRUMMITT. BRUMMITT drove his vehicle away from mine and lined up. The next vehicle that had buckshee stuff drove up to my truck. This vehicle was driven by Pte FORSBERG. I helped FORSBERG to unload one sack of flour from his truck to mine. FORSBERG only had this one sack of flour. He then drove away and lined up behind BRUMMITT. Pte Edworthy's truck was the next to pull up beside me. He had six cases ofcoffee, which we transferred to my truck. He then moved off into the line up. The next vehicle was drivenn by Pte BRIAN and he had 27 cases of margerine, thiswas loaded on my truck. Pte BRIAN pulled into the convoy line and

Continuation of Statement
of M-50109 L/Cpl OWEN R.J.

line and the convoy moved off. Allthe vehicles that had buckshee stuff were at the rear of the convoy. After the convoy pulled away I went and Picked up Sgt LAWSON and we then drove to lo: DAD at HERRENTHALS where we unload our supplies. Ileft Sgt LAWSON there and picked up L/Cpl MASTERS L/Cpl MASTERS knew nothing about the load I had and was xxx only riding with me in order to see his girl friend who lives near WETTEREN He had heard that I was going to WETTEREN topick up Sgt HYDE,so asked me if he could come along. After each man had loaded his buckshee stuff onto my vehicle, he told me what he expected to receive when I sold the stuff. BRIAN did not tell me the price of his because he just shifted his load and left. I was told later by one of the men the price of BRIAN's load, but Ican't remember this man. The prices told to me were as follo ws:-

Coffee	6,000 frs per case
Cheese	3,000 frs per case
Flour	12,000 Frs per sake
Margerine	3,000 frs per case.

I was told toreceive 10 percent of the money obtained from the sale of all the stuff. After picking up L/Cpl MASTERS I started our for WESTEREM, where I was going to try and sell the stuff. L/C MASTER'sgirl friend's home was on the way to WESTEREM and I dropped him first. It was here that I was arrested by Captain MORRISON of the Special Investigation Section. This was the first load that I transported fot the boys in the platoon. During the monght of Sept 44 I sold four sacks of sugar to the man in WESTEREM where I was going to sell the load that I had when I was arrested. This man lives at the youse I pointed out to Captain MORRISON on Sunday, 7 Jan 45. I don't know the man's name but I met him when I was stateioned in WESTEREM during August and Sept 44. I first met himjust outside our camp and he told me he would buy any amoung ofCorned beef,rice, coffee margerine and all other food stuffs. This man is a small man, about5'6" agen between 35yrs and 40 yrs., and speaks goodEnglish. He told me he had lived in Ontario and United States for 12 years.

I know there has been truck loads of food stuffs delivered to people in WETTEREM by members of my platoon, but don't know the men concerned or where they deliver the stuff to. Ican honestly say that this is the first truck load of food stuffs, or for that matter any stuff,that I have been concerned with. And once again Iwould like to say that L/Cpl MASTERS has nothing todowith this business.

I have no knowledge of how the buckshee foodstuffs are obtained by the boys in our platoon, but I know it is impossible to steal such a large amount of supplies from the S.S.D. I don't think there is anything further I can tellyou, This statement has beenread over to me and it is true to the best of my knowledge.

Signed R.J. OWEN.

Statement taken down in writing read over and signeture witnessed by R. Sutherst, Sgt No. 1 S.I.S 9 Jan 1945.

Statement of:

ex "A" in case of L/Cpl Owen.
E.O. Owen Capt
Offr Taly Sanman of Evidence

M. 50109 L/Cpl. Owen, Robert, James.
35 Cdn Army Tps. Comp. Coy, R.C.A.S.C.
Employed as 2 i/c 7 Section 'B' Platoon, & Driver.

I have been cautioned that I am not obliged to say anything unless I wish to do so, but that anything I do say will be taken down in writing and may be given in evidence. I understand this caution and make the following statement of my own free will.

R. J. Owen

On Saturday, 6 Jan 45, I returned to my Platoon H.Q. at about 1815 hours, after picking up leave personnel in Brussels. I was told by the clerk in the Orderly Room, Pte Stevenson, that Sgt. Hyde had left a message with him to the effect that I was to pick up Sgt Hyde at 3 am, Monday 8 Jan 45, in Wettern. I didn't know anything about this so paid no attention to it, as I figured there was some mistake.

Sunday morning, 7 Jan 45 as the Platoon Supply Convoy was pulling out from the Platoon lines to pick up supplies, I was handed a written message by Pte McInnis, in the presence of Sgt Lawson, to the effect that I was to pick up Sgt. Hyde in Wettern at 3am Monday morning. The message was signed by Sgt. Hyde and stated that I was to go straight to Alost from the supplies. I was driving a truck on this detail and Sgt. Lawson who was in charge of the Convoy was riding with me. He asked to see the note that was handed to me and on reading it said, "Seeing that you are going down there, you might as well take the 'Buck shee' load, we'll leave you as spare vehicle." I said O.K. it was all right with me. Sgt. Lawson asked me if I knew of a place where I could get rid of the load. I told him I had a place in mind where I could get rid of it all.

P.T.O.

Lawson asked me if the place I had in mind was Wettern. I said, "no it wasn't." ~~He then [illegible] that~~ ~~that [illegible]~~. He then said something to the effect that Wettern was getting too hot, but I can't remember the exact words. This conversation took place whilst travelling from our Platoon lines at St. Leonard to the supply point at Oisterwijk. The convoy consisted of 21 vehicles and arrived at the B.S.D., between 9.45 am and 10 am. On arrival at this point Sgt. ~~Lawson~~ Lawson told me to pull my vehicle over to the side and let the other vehicles pass me and line up for the supplies. My vehicle was number one in the convoy. I pulled over to the side of the road and stopped. The convoy passed me and lined up to draw the supplies. Sgt. Lawson got out of the vehicle and went to take charge of shooting the vehicles into the various sheds to draw the supplies. About three quarters of an hour later Sgt. Lawson came to my truck and told me that he had two cases of coffee and ten cases of cheese for himself. He told me which lorry they would come out on, Pte Brummitt's, R.B. Lawson told me to drive him up to his girl friend's place. This I did and he stayed there. Lawson's girl friend lives on the road that leads to the B.S.D. about half a mile away from the B.S.D. Lawson told me I was to go and wait where the vehicles lined up after leaving the B.S.D. with the supplies; and that the vehicles that had buckshee supplies would stop at my vehicle and transfer the stuff. After I was loaded I was to pick him up. I went to the spot where Lawson told me to go and waited. I waited about five minutes and the vehicles from my Platoon came along. Pte Brummitt's R.B. vehicle was the first to stop beside me. Brummitt and I took 2 cases of coffee and fifteen cases of ~~[illegible]~~ cheese from his vehicle and loaded it on to mine. The two cases of coffee and ten cases of cheese belonged to Sgt. Lawson, whilst the remaining five cases of cheese belonged to Pte Brummitt. Brummitt drove his vehicle away from mine and lined up.

R. J. Owen

P.T.O.

Continuation of Statement:-

M-50109 L/Cpl Owen, Robert James.

The next vehicle that had buckshee stuff drove up to my truck. This vehicle was driven by Pte. Forsberg. I helped Forsberg to unload one sack of ~~flour~~ from his truck to mine. Forsberg only had this one sack of flour. He then drove away and lined up behind Brunnitt. Pte Odsworthy's truck was the next to pull up beside me. He had six cases of coffee, which were transfered to my truck. He then moved off into the line up. The next vehicle was driven by Pte. Brian and he had 27 cases of margarine, this was loaded on my truck. Pte Brian pulled into the convoy line and the convoy moved off. All the vehicles that had buckshee stuff were at the rear of the convoy. After the convoy pulled away I went and picked up Sgt. Lawson and we then drove to 163 D.I.D. at Herenthals where we unload our supplies. I ~~f~~ left Sgt. Lawson there and picked up L/Cpl. Masters. L/Cpl. Masters knew nothing about the load I had and was only riding ~~with~~ with me in order to see his girl friend who lives near Welteren. He had heard that I was going to Welteren to pick up Sgt. Boyde, so asked me if he could come along.

After each man had loaded his buckshee stuff on to my vehicle he told me what he expected to receive when I sold the stuff. Brian did not tell me the price of his because he just shifted his load and left. I was told later by one of the men the price of Brian's load, but I can't remember the man. The prices told to me were as follows:-

Coffee	6,000 frs.	per case.
Cheese	3,000 frs.	" "
Flour	1,200 frs	per sack.
Margarine	3,000 "	" case.

I was to receive 10 percent of the money obtained from the sale of all the stuff. After picking up L/Cpl.

Masters I started out for Westrem where I was going to buy to sell the stuff. L/Cpl Masters girl friend's home was on the way to Westrem and I dropped him first. It was here that I was arrested by Captain Morrison of the Special Investigation Section. This was the first load that I transported for the boys in the platoon. During the month of Sept 44, I sold four sacks of sugar to the man in Westrem, when I was going to sell the load that I had when I was arrested. This man lives at the house I pointed out to Captain Morrison on Sunday, 7 Jan 45. I don't know the man's name, but I met him when I was stationed in Westrem during August and Sept 44. I just met him just outside our camp and he told he would buy any amount of Corned Beef, Rice, Coffee, Margarine and all other food stuffs. This man is a small man, about 5'6", aged between 35 yrs and 40 yrs, and speaks good English. He told me he had lived in Ontario and United States for 12 yrs.

I know there has been ~~10~~ truck loads of food stuffs delivered to people in Westrem by members of my platoon, but don't know the men concerned or when they deliver the stuff to. I can honestly say that this is the first truck load of food stuffs, or for that matter any stuff, that I have been ~~con~~ Concerned with. And once again I would like to say that L/Cpl Masters has nothing to do with the business.

I have no knowledge of how the butcher's shop food stuffs are obtained by the boys in our Platoon, but I know it is impossible to steal such a large amount of supplies from the R. A. S. C. I don't think there is anything further I can tell you. This statement has been read over to me and it is true to the best of my knowledge. R. J. Owen

Statement taken down in writing, read over, and signatures witnessed by R. Lockhart, Sgt. No. 1 S. I. S. 9 Jan 45.

Exhibit Y' Josh.

M.50109 L/Cpl OWEN, R.J.

AA Sec 11 1

17 Oct 44

17 Oct 44

nil 40

nil

40 nil

26

26 Nov 40

4 yrs 82 days

The Canadian Volunteer Service Medal & Clasp

L/Cpl 9 Aug 44

FEB 16 1945

D.E. Eckold Capt
Adjt
35 Cdn Army Tps Comp Coy RCASC

No M.50109 Name OWEN, R.J. Sqn, Battery or Company Corps R.C.A.S.C. Date of enlistment 26 Nov 40 GC Badges Service or Proficiency Pay MFM 6 (AFB 122) 40/PAS/136 (3438)

Date of last entry in Company Conduct Sheet Nil No and date of last drunk Nil Period not reckoning towards freedom from extra fine N/A Sheet No 3 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	-	Second sheet destroyed on completion of two years service without entries on 26 Nov 42							
Field	-	AWARDED THE CANADIAN VOLUNTEER SERVICE MEDAL AND CLASP w.e.f. 15 JAN 44							
Field	17 Oct 44	L/Cpl		AA Sec 11 - NEGLECTING TO OBEY PART I ORDERS - Was abroad in GHENT after Military Curfew	Documentary	Severely Reprimanded	20 Oct 44	Major DB Morrison	

Certified True Copy

Adjt

35 Can Army Tps Comp Coy RCASC

Exhibit 3 Josh

(PTO)

E - 3

STATEMENT IN MITIGATION in the Case of M-50109, Pte (L/Cpl) Owen, R.J., 35 Cdn Army Tps Comp Coy RCASC

Now we have a Lance Corporal with 4 years service and only 1 mark on his conduct sheet, which was for being out after curfew in Ghent. He is wearing a good conduct stripe. In the evidence read by the Court he has not at anytime had any dealings himself in rations except the time the Sgt instructed him to use his vehicle to carry rations that had been arranged for by the Sgt and others in the platoon. His one fault is that he did drive the lorry for the Sgt who disposed of the rations.

There is little more that I can say. He is a Lance Corporal and subject to the commands of the Sgt. When you are considering sentence I would ask you to take a broad view of it and deal very very leniently with him.

81

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

NAME Owen, R.J.

Reg. No. M-50109

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. 39 or 39A (X-Ray Report)		
M. F. D. 939A (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.

H.Q. 99/37 ~~510~~/Owen RJ/1

M.F.B. 387
500M—8-42 (1352)
H.Q. 1772-39-440

DEPARTMENT OF NATIONAL DEFENCE—(ARMY)

CROSS REFERENCE

M 50109 Pte Owen RJ

XUK 276

H.Q.

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")		
AUG 15 1945	20 Aug	[illegible]	DSC	AG 12	Papers	CR	14 Aug
AUG 22 1945	28 Aug	[illegible]	DSC	AG 12	PER B. F.	C. R.	AUG 20 1945
				AG 12	WITH PAPERS C. R.		AUG 24 1945
SEP - 1 1945	1 Sep	[illegible]	DSC	ADC	Signature GO i/c	DSC	30 Aug.
11 SEP 1945	4 Sep	P.A.	DSC	AG-12	[illegible]	CR	4 Sept.
10 SEP 1945	14 Nov	[illegible]	DSC	AG 12	with papers	[illegible]	[illegible]
26 SEP 1945	26 Sep	P.A.	DSC	AG 12	Papers	CR	2 - SEP 1945
	14 Nov	BF	RBN				
17 NOV 1945	17 Dec	BF	[illegible]	A8	BF	CR	14/11
DEC 17 1945	21 Dec	B.F.	[illegible]	A8	BF	CR	17 Dec
				A8	WITH PAPERS	CR	DEC 19 1945

99/37/OWEN RJ /1 (A.8)

CDN SEC 2 ECH HQ BRIT ARMY OF THE RHINE

20 Dec 45

Canadian Military Headquarters
2 Cockspur Street
London, S. W. 1

M80109 Pte Owen R.J.
2/8 CIB Coy RCASC (CAOF)

Attn: AAG (Dis)

1. Herewith AF A3104 in respect of the sentence set forth below for custody:

Sentence	Date	Suspended	Remitted by
1 yr imp IML	20 Feb 45	5 Sep 45	GOC 3 Cdn Inf Div (CAOF) on 5 Dec 45.

2. A certified copy of the proceedings is also enclosed.

(J. A. V. Cade) Major
for Officer IC
Cdn Sec 2 Ech HQ Brit Army of the Rhine

A.5

Please ensure that correct casualty return has been rendered and documentation of remission is completed.

XI.

Space for further Review (continued from page 2).

Date	Directions	Signature and Appointment of Authority giving the directions	If sentence suspended, date of release, No. of marks earned to count towards remission, and Signature of O.C. Prison or Detention Barracks

XII.—Remarks and recommendations of C.O. on Second Trial.

Date		Signature

XIII.—Remarks and recommendations of Confirming Officer on Second Trial.

Date		Signature

Certified true copy

Certified true Copy

Army Form A 3104.

REVIEW OF SENTENCES AWARDED BY COURT MARTIAL.

I.—Case of No. M.80109 Pte L/Cpl/ OWEN Robert James Unit 35 Cdn A Tps Comp Coy RCASC

Sentenced to 1 yr imp IHL on 20 Feb 45

Age on, and date of, enlistment 22 yrs 26 Nov 40 Term of service Duration

FIRST TRIAL.

For details of offence, see paragraph VII. For C.O.'s remarks, see paragraph IX.

II.—To .....
Superior Military Authority.

I have directed that the above-named be not committed to undergo his sentence, which I recommend should be (suspended) (put into execution) (1) for reasons given in paragraph X.

Place .....

Date .....
Confirming Authority.

III.—I direct that the sentence (which I hereby commute to .....) (of which I remit .....) (1) (2) (be suspended) (be put into execution) (1) and be reviewed on .....(3).

Place .....

Date .....
Superior Military Authority (4).

(For action on review, see paragraph VI.)

SECOND TRIAL.

For details of offence, see paragraph VIII. For C.O.'s remarks, see paragraph XII.

IV.—(5) To .....
Superior Military Authority.

This man was again convicted on ..... and sentenced to .....
and I have directed that he shall not be committed to undergo his sentence, which I recommend should be (suspended) (put into execution) (1) and run (concurrently) (consecutively) (1) with the previous (6) sentence for the reasons given in paragraph XIII.

Place .....

Date .....
Confirming Authority.

V.—(5) I direct that the sentence (which I hereby commute to .....) (of which I remit .....) (1) (2) (be suspended) (be put into execution) and that it run (concurrently) (consecutively) (1) with the previous (6) sentence of ..... and be reviewed on .....(3).

Place .....

Date .....
Superior Military Authority (4).

(1) Erase words not required, and initial erasures.
(2) A sentence of penal servitude or imprisonment, combined with Discharge with Ignominy, cannot be suspended unless the Discharge with Ignominy is remitted.
(3) A suspended sentence must be reviewed at least once every three months, and a sentence put into execution should be reviewed in not more than six months.
(4) An order directing a sentence to be put into execution must be signed by the Superior Military Authority personally.
(5) This paragraph to be left unused until required. If the case is reviewed a third time, a fresh form, using only paragraphs IV and V, will be made out and attached to this form, and all further reviews will be on the attached form.
(6) A previous sentence of imprisonment or detention in a state of suspension is avoided by the award of a subsequent sentence of penal servitude.

(76905) Wt.49540/415 30,000 1/44 A.& E.W.Ltd. Gp.698 Forms/A.3104/12

VI.—Action on Review.

(Whether the sentence or sentences are suspended or in execution.)

Any Reviewing Authority *under Section 57 of the Army Act* may under that Section mitigate, remit or commute a sentence which is in execution, and if the sentence as commuted or mitigated is penal servitude, imprisonment or detention, it will remain subject to the powers granted by Section 57A of the Army Act. A partial remission of a sentence in suspension is not legal.

Date	Directions	Signature and Appointment of Authority giving the directions	If sentence suspended, actual date of release and marks earned to count towards remission, and signature of O.C. Prison or Detention Barracks
			sent susp wef 5 Sep 45
	Suspend wef 5 Sep 45	ELM BURNS MAJ GEN GO IC CDN SEC I ECH HQ 21 A Gp 30 Aug 45	marks earned wef 5 Sep 45- days in susp 167 1584 released 5 Sep 45 WD Cain, Major, Comd 1 Cdn Detn & FP Bks
	remit remainder of sentence	C Vokes, Maj-Gen GOC 3 CID CAOF 5 Dec 45	

(Continued on page 4.)

All recommendations, etc., considered upon review, should be pasted here.

Charge or Charges giving particulars	Date of Offence	Date of Trial
VII.—First Trial. AA 41 WOAS Receiving stole goods, Sec 33(1) Larceny Act 1916 received 27 cases margarine, 1 sack flour, 15 cases cheese, 6 cases coffee and 2 cases coffee army rations, public property knowing same to have been stolen. AA Sec 40 WOAS Conduct etc. concerned in improper dealings in connection with army rations other than above.	7 Jan 45 During Sep 44	19 Feb 45 19 Feb 45
?????? Lt. Signature of Officer making entry.		
VIII.—Second Trial.		
Signature of Officer making entry.		

If further space required, an additional slip should be pasted here.

IX.—C.O.'s remarks and recommendations on First Trial.

Date		Signature
7 Mar 45	I concur in this sentence.	???? Major

X.—Confirming Officer's remarks and recommendations on First Trial.

Date		Signature
10 Mar 45	Recommend review at expiration of normal period.	???? Brig DJAG FIRST CDN ARMY

220/SUS/Div Tps/1

HQ 3 Cdn Inf Div CAOF
15 Dec 45

Cdn Sec 2 Ech
HQ BAOR

REVIEW OF SUSPENDED SENTENCE
Div Tps

31/Owen RSJ 38

1. Herewith AFs A 3104 for the undermentioned soldier with the endorsement that remainder of sentence be remitted:

		UNIT	DATE OF REMISSION
M 50109	Pte OWEN R J	2/8 Cdn Inf Bde Coy RCASC CAOF	5 Dec 45

(C. VOKES) Maj-Gen
GOC 3 Cdn Inf Div CAOF

Enc:
EHKH/b

Date 17 Dec 45

HQ
3 Cdn Inf Div (CACF)

M60109 Pte Owen R.J.
2/6 CIB Coy RCASC (CACF)

17 Nov 45.

Date 17 Nov 45

HQ
3 Cdn Inf Div CAOF

M80109 Pte Owen R.J.
2/3 CIB Coy RCASC CAOF

(J A Y Cade) Major
for Officer i/c
Cdn Sec, 2 Sub HQ Brit Army of the Rhine

PART II ORDER EXTRACT FORM

TO: OC 13 Bn, 2 CBRG

99/~~20~~ 34/X List RCASC/1(A5X2)

17 Sept,45. 19

EXTRACTS FROM: UNIT X-2 List (RCASC)

Part II Order No. 215 dated Sept,45.

REMISSION & SUSPENSION OF SENTENCE.

Sentence of 1 year imp with HL awd on 20 FEB 45 is suspended wef 5 SEPT,45.
Auth: 1 Ech 510/Owen,RJ/1(AG12) dated 31 AUG,45.

M 50109 PTE OWEN, R J

2/8 C I B Coy RCASC

Copy to: DJA - 1 Ech
A-8
R R & R.

The following documents are { attached. Please acknowledge receipt on attached duplicate.
required. Please forward same.

for Infn

Originating Clerk's Initials ee

for (WH LAUGHLIN)CAPTAIN. for
Officer in Charge
Canadian Section, GHQ, 2nd Echelon ,HQ,BAOR.

1/70 ECH—6
40/P&S/1276 (6704)

1 CD/PP/BKS/ 1207

1 CDN DETN & PP BKS
CDN PRO CORPS

5 Sep-45

Cdn Sec 1 Ech
HQ 21 A Gp

ATP AG 11

SUSPENSION OF SENTENCE

M-50109 Pte OWEN RJ Under Auth:- Cdn Sec 1 Ech HQ 21 A Gp 510/OWEN R J/1 (AG 12)d/31 Aug-45

1. the m/n soldier's sentence has been placed in suspension wef 5 Sep-45 and he was despatched to 13 CDR Bn Attached please find AF A3104 with Pt VI Completed.

2. For your information, please

WDC/el

W D Cam Major
COMMANDANT
1 CDN DETN & PP BKS
CDN PRO CORPS

ARMY FORM C 2136 (Large Modified)
FG 46
G/P & S/2021 (6504)

MESSAGE FORM

99/6/POST DISC/2
99/20/2/8 CIB COY (CAOF)/1

Register No.

Call	Srl No.	Priority	Transmission Instructions

ABOVE THIS LINE FOR SIGNALS USE ONLY

FROM (A) Originator	Date—Time of Origin	Office Date Stamp
CDN SEC 2 ECH HQ BRIT ARMY OF THE RHINE (A2)	031200B SEP 45	

For Action

1 CDN DETENTION & FD PUNISHMENT BKS:
2/8 CDN INF BDE COY (CAOF):

TO

(W) For Information (INFO)

ARCO 3 DIV (CAOF): A-5 (2 ECH): A-8 (2 ECH):
A BRANCH 3 DIV (CAOF): (AG12) 1 ECH:

Msge Instrns	GR

Originator's No. EA2/2437

UNCLASSIFIED (.) PT 1

The following SUSS will be GOS X-2 List wef 4 Sep 45 and TOS 2/8 CDN INF BDE COY (CAOF) wef 5 Sep 45 (.) 1 Ech letter 510/Owen RJ/1 (AG.12) d/31 Aug 45 refers (.)

PT 2 On arrival at new unit this soldier will be paraded to his CO and the following explained to him:-

(a) that his sentence is suspended not remitted

(b) that unsatisfactory conduct may lead to its reimposition

(c) that he is being posted to a CAOF unit until such time as he earns by effective service the final remission of his sentence

(d) that when remission has been earned he will be eligible for reallocation in accordance with his point score and CFA 376

PT 3 No soldier released on suspended sentence is to be repatriated from this theatre before his sentence is remitted, without special authority from 1 Ech.

PT 4 The cases of soldiers under suspended sentence will be reviewed in accordance with the usual practice of GOs C Divs or other appropriate superior military authority who are empowered to remit at their discretion

AG12

M 50109 PTE OWEN R J RCASC

THIS MESSAGE MAY BE SENT AS WRITTEN BY ANY MEANS EXCEPT	IF LIABLE TO BE INTERCEPTED OR TO FALL INTO ENEMY HANDS THIS MESSAGE MUST BE SENT IN CIPHER	ORIGINATOR'S INSTRUCTIONS DEGREE OF PRIORITY
WIRELESS		
SIGNED (M C MAXWELL)	SIGNED H W Hamilton	

Time	Syst	Op
THI or TOR		
Time Clrd		

THI	TOR (Cipher)	TOR (Signals)

510/Owen RJ/1 (AG.12)

CDN SEC 1 ECH HQ BRIT ARMY OF THE RHINE

31 Aug 45

Comd
1 Cdn Detn & F P Dks

N.50109 Pte. Owen, R. J.

1. The m/n soldier was sentenced by FCCM on 20 Feb 45 to imp with hard labour for one year for an offence under AA Sec 33(1) and AA Sec 40.

2. This sentence was reviewed by the CO i/c this HQ on 30 Aug 45 and the following direction was made:

"Suspend wef 5 Sep 45"

3. This soldier on release will be paraded to the CO and the following explained to him:-

(a) that his sentence is suspended NOT remitted.

(b) that unsatisfactory conduct may lead to its reimposition.

(c) that he is being posted to a CAOF unit until such time as he earns be effective service the final remission of his sentence.

(d) that when remission has been earned he will be eligible for reallocation in accordance with his point score and CF AB76.

4. Herewith AF AB104 bearing direction in para 2 above. May Part VI be completed showing actual date of release and remission marks earned, and the form returned to this HQ with a statement that the instrs in para 3 above have been carried out.

5. Cdn Sec 2 Ech HQ Brit Army of the Rhine will issue necessary instrs to post and despatch this soldier in accordance with the above instrs. Copy of instrs will be forwarded to this HQ.

DSC.
(A. N. Kearns) Major
DAAG 'Dis'
Cdn Sec 1 Ech HQ Brit Army of the Rhine

Copies to:

Cdn Sec 2 Ech HQ Brit Army of the Rhine (Att'n: Records)
Cdn Sec 2 Ech HQ Brit Army of the Rhine (Att'n: P.A.T.)
DPM, Cdn Army Overseas,
Govt Bldg, Broadward, Ave.,
ACTON, W. 3 (Att'n: SC)

WORK SHEET

REVIEW OF SENTENCES AWARDED BY COURT-MARTIAL

I. ADC to GO i/c Date 30 Aug 45

II. No M.50109 Rank Pte. Name OWEN R J

Unit 35 Cdn Army Tps Comp Coy RCASC Age 26

Date of enlistment 26 Nov 40

Offence: AA Sec 33(1) - Larceny Act 1916 - receiving public property knowing same to have been stolen. (in Jan 45.)

AA Sec 40 - concerned in improper dealings in connection with Army rations other than above. (in Sep 44)

Pleaded guilty.

Sentence: 1 yr imp with hard labour

WEF 20 Feb 45 Last Reviewed FIRST REVIEW

III. Extenuating Circumstances: Nil

Rec by Court: Nil

Character (previous convictions): AA Sec 11 - 1 offence - severe reprimand (Out after curfew)

Not in action.

IV. Rec by CO: I concur in this sentence.

V. Rec by next senior officer:

Recommend review at expiration of normal period.

VI. Rec re review by AG.12: This soldier belonged to an RCASC platoon in which the majority of the members including the Sergeants were operating in the black market. He was arrested driving a 3-ton lorry in which there were the following rations:

27 cases of marjarine
1 sack of flour
15 cases of cheese
8 cases of coffee

These rations had been given to the accused by various members of the platoon on the understanding that the accused would get ten percent for disposing of them. One of the platoon sergeants made the arrangements for the collection of the rations and the supplying of the veh. A portion of the rations were actually owned by the Sergeant. The accused claimed that this was the first time he had made a trip of this nature although he admitted selling some flour the previous Sep.

Comd, 1 Cdn Detn & F P Bks:

A. Wishes to return to Canada for discharge
B. Very satisfactory
C. Yes

This review is considerably overdue. This is due to the fact that the proceedings together with the AF A3104 were sent to CMHQ as the soldier was being despatched to the UK and had been posted to the X-8 List. This posting was subsequently cancelled and the soldier committed to 1 Cdn Detn & F P Bks.

1945 JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC

1946 JAN FEB

Post to Cast

D S Clapperton
(D. S. Clapperton) Capt.
AG.12
Cdn Sec 1 Ech HQ Brit Army of the Rhine

Work Sheet

10/OWEN RJ/1
A.G.REV(a)

GO i/c
Cdn Sec 1 Ech HQ 21 A Gp
CAO.

21 Aug 45

M.50109 Pte Owen, R.J.

1. Ref your 510/Owen RJ/1 (AG 12) d/15 Aug 45.

2. Herewith AF A3104 and certified copy FGCM proceedings, as requested.

(Beverley Matthews) Brig.,
Deputy Adjutant General
CANADIAN MILITARY HEADQUARTERS.

Enc.2.

510/OWEN R J/1 (AG 12)

15 Aug 45

CMHQ

M.50109 Pte Owen R J

1. Ref your 10/OWEN RJ/1 A.G.REV(a) d/3 Aug 45.

2. The m/n soldier is presently at 1 Cdn Detn & FP Bks and it is requested that the original AF A3104, together with a copy of the proceedings be fwd as soon as possible.

(E. L. M. Burns) Maj-Gen
GO IC
Cdn Sec 1 Ech HQ 21 A Gp

COURIER

No 1 Cdn Detn/ 1207
No 1 Cdn Detn & FP Bks Cdn Pro C

10 Aug 45

Cdn Sec GHQ
1 Ech 21 A GP

SENTENCE UNDER REVIEW

M50109 Pte Owen RJ

Report for first review of sentence

1. ~~XXXXXXX~~ In accordance with instrs, the u/m report relative to sentence under review for the m/n soldier is forwarded

2. The u/m infm is appended:

(a)	Date sentenced by FGCM	20 Feb 45
(b)	Date admitted to detn bks	15 Mar 45
(c)	Number of days remission already lost	NIL
(d)	Number of marks already earned	1352
(e)	Date of release with full remaining remission	17 Oct 45

3.	Attentiveness to drill and parade square work	Attentive
	Reaction to strict military discipline	Favorable
	Appearance and bearing	Smart and soldier ly
	Cleanliness in person and clothing	Clean in person and kit
4.	Application to work and ingenuity	Not employed
5.	Military employment upon release from detn	Wishes to return to Canada for his discharge

6. This soldier has done very well in this unit and it is felt he will do his best in any unit for the remainder of his service.

W S Cain Major
Commandant
1 Cdn Detn & FP Bks
Cdn Pro Corps

WDC/fa

10/OWEN RJ/1
A.G.REV(a)

GO i/c
Cdn Sec 1 Ech HQ 21 A Gp
CAO.

3 Aug 45

M.50109 Pte Owen, R.J.
35 Cdn Army Tps CompCoy, RCASC
FGCM 20 Feb 45.

1. Ref this HQ letter numbered as above d/15 May 45.

2. A reply d/21 May 45 was received from Cdn Sec 2 Ech HQ 21 A Gp in which it was stated that the m/n soldier was on strength X8 List pending return to UK at that time.

3. Original AF A3104 is held in file at this HQ. Please advise if this soldier is to be returned to UK and sentence reviewed here, or if you wish original AF A3104 forwarded.

(Beverley Matthews) Brig.
Deputy Adjutant General
CANADIAN MILITARY HEADQUARTERS

Owens W. R. Cpl. M. 20951
44
10-0-34

10-0-34

44

44

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 Fifth day of September, 1940.

Whereas it appears to me, the undersigned, an officer in Command of the Third 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 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.

* 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;~~

~~(a) The following reasons, namely:~~

President.

Rank.	Name.	Regiment.
Major	A. A. Ernst	West N S R

Members.

Rank.	Name.	Regiment.
Captain	C. Bellevance	Royal 22e R.
~~Captain~~	~~J. A. A. G. Vallee~~	~~Royal 22e R.~~
Lieut.	H. M. Logan	Carlt & York R.

* 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] Lieut-Colonel

Commanding Third Canadian Infantry Brigade

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)
M-20951, Cpl. Owens, Wilfred Reginald. 3 Cdn Inf Bde	(1) W.O.A.S. absenting himself without leave. A. A. 15	Guilty	Guilty. To be reduced to the ranks. Automatic forfeiture of pay for time absent.	R
	(2) W.O.A.S. embezzling property belonging to a Regimental Mess. A. A. 18 (4).	Not Guilty	(2) Not Guilty.	R
	OR			
	(3) W.O.A.S. conduct to the prejudice of good order and military discipline. A. A. 40.	Not Guilty	(3) Guilty. To be put under stoppage of pay until he has made good the sum of £14-13-4½d in respect of monies turned over from sales in the N.C.O.'s mess as recorded in mess cash-book,	R
D-61552, Cpl. (A/Sgt) Emile Thibodeau, 3 Cdn Inf Bde	(1) W.O.A.S. absenting himself without leave. A. A. 15.	Not Guilty	(1) Guilty. To be reduced to the ranks. Automatic forfeiture of pay for time absent.	R
	(2) W.O.A.S. left the place of parade appointed by his Commanding Officer without leave before he was relieved. A. A. 15 (2).	Not Guilty	(2) Guilty. Punishment taken into consideration with charge (1)	R

* 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 (In each case) J M Logan Lt

(Signed) Roy F. Fox Lieut-Colonel (Signed) Charles Delorme Capt

~~Brigadier~~ Commanding, 3rd Inf Bde, CASF
Commanding Officer (e)

A. A. Ernst Major
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 day of , 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 10th day of Sept, 1940

A. A. Ernst Major
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.)~~

* 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 Eleventh day of September 1940

Roy F. Fox Lieut-Colonel ~~Brigadier~~
Commanding, 3rd Inf Bde, CASF
Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) 11 SEP 1940 (Signed) R. Gough for CAPT. Staff Captain, 3rd Inf Bde, CASF

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.

(11759) Wt. 40123—293 200 10 1/40 P. St. G. 120

Re: Cpl. Owens, W. R.
3 Canadian Infantry Brigade

In the opinion of the Court, mess records were not kept in accordance with regulations as laid down in K. R. (Can), and from the evidence submitted and as pointed out by the Defence the records are in such an unsatisfactory state that it is impossible to arrive at the exact amount entrusted to the custody of the said Cpl. Owens. Consequently, in arriving at a decision as to the amount to be refunded only the exact figures as shown in the cash book(marked Exhibit "A - 3") as having been passed from Cpl. Cote to Cpl. Owens are taken into consideration.

With reference to exhibit "A - 1" the Court feel that the accused, not knowing the exact amount deficient, signed the said exhibit on being advised that a back check of the records had shown approximately this amount short.

The Court have perused all available records and from the evidence submitted have arrived at the finding and awarded sentence as shown on schedule "A".

President. A. A. Ernst Major

Member. Charles Bellomo Capt

Member. H. M. Rogan Dr.

WHEREAS by convening order dated fifth September, 1940 Lieut. Col. P. Flynn, commanding Third Canadian Infantry Brigade convened a Field General Court Martial to try, among others, offences set out in schedule attached to said order, alleged to have been committed by M.20951 Cpl. Owens, Wilfred Reginald, 3 Canadian Infantry Brigade,

AND WHEREAS it appears to the Court before they have begun to examine the witnesses that in the interests of justice an amendment to the second charge as set out in the Charge Sheet attached to this order is required in order that it may conform to the requirements of a charge under section 18 (4) of the Army Act,

The Court hereby so reports its opinion to the convening authority.

Dated this 7th day of September, A.D. 1940.

President..... G. A. Lamb Major
Major, West N. S. R.

Member Charles Bellerose Capt.
Captain, R. 22e R.

Member..... H M Logan Major
Lieutenant, R. 22e R.

CHARGE SHEET

The accused, No. M-20951, Cpl. Wilfred Reginald Owens, H. Q. 3 Cdn Inf Bde, a soldier of the Canadian Active Service Force is charged with :-

(1st charge, Sec. 15 (1) A. A.) While on active service, absenting himself without leave, in that he, at Effingham, was absent, without a pass or written leave, from 1500 hours, 15 Aug 40, to 1400 hours, 2 Sep 40, totalling 16 days, 23 hours.

2nd Charge
Sec. 18 (4)
Army Act.

While on Active Service embezzling money belonging to a Regimental Mess in that he in the field on or about 15 August, 1940, having as treasurer of the Serjeants' Mess of the Third Canadian Infantry Brigade Headquarters received from Cpl. Cote, Jean, eighteen pounds, ten shillings, for and on behalf of the said mess fraudulently embezzled the same.

Roy Ferris
.....Lt. Col.
Commanding 3 Canadian Infantry Brigade
Convening Officer.

B 2
A. A. Evans Maj

SUMMARY OF EVIDENCE in the case of No. M-20951, Cpl. Wilfred Reginald Owens, H, Q. Third Canadian Infantry Brigade, C. A. S. F.

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

First Witness for the Prosecution.

No. F-42555, C.Q.M.S. William Eugene Ford, H. Q. 3 Cdn Inf Bde, having been duly sworn, states:

At Effingham, I am in charge of H.Q. nominal roll which shows that Cpl. Owens did not answer roll call at 2100 hours on 16 Aug 40 and every day from the 16 Aug 40 the roll showed that when Cpl. Owens' name was called he was still absent until 0800 hrs 27 Aug 40 when I went on leave and the nominal roll was taken over by another N.C.O. Cpl. Owens had ceased to be absent when I returned from my leave on 3 Sep 40.

When Cpl. Owens did not answer roll call on 16 Aug 40 or 17 Aug 40, an inventory of his personal belongings was made by Cpl. A. P. Stairs and myself and we found two air-rifles, NO. 764 and No. 752, .177 bore, W. Greener Co. makers, which are now in the custody of S/Sgt. W. Peattie.

In our Bde N.C.O's. Mess, Cpl. Owens was the Secretary-Treasurer and I am the President. To the best of my knowledge, when Cpl. Owens went A. W. O. L. he had in his possession approximately £17. 0. 0. which was the property of the N.C.O's. Mess and was to have been used by him to pay certain bills owed by the Mess. I ascertained after Cpl. Owens went A. W. O. L. that the bills had not been paid.

Cross-examined by the Accused. W. E. Ford C.Q.M.S

Question 1 — Did I not advise you that the rifles had been sent to Bde in error and that I would keep them until instructed by D. A. D. O. S. as to their disposal.

Answer 1 — That is correct. W. E. Ford C.Q.M.S

Second Witness for the Prosecution.

No. F-41614, Sgt. John Freeman Ramey, H. Q. 3 Cdn Inf Bde, having been duly sworn states:

At Effingham, I am Transport Sergeant and am usually around camp at all times. I know that Cpl. Owens was absent for the period from approximately 15 Aug to 2 Sep.

The Accused declines to Cross-examine this witness.

J. F. Ramey Sgt.

Third Witness for the Prosecution.

No. G-17310, Cpl. James ~~Melvin~~ Malcolm McKitchie, H. Q. 3 Cdn Inf Bde, having been duly sworn, states:

MALCOLM JM

At Effingham, I was Orderly N.C.O. on 2 Sep 40, and on my return to the camp from ration meeting point at approximately 1445 hrs, I saw Cpl. Owens had returned and was under close arrest. I know that on the number of occasions between 15 Aug 40 and 2 Sep 40 when I was Orderly N.C.O. that Cpl. Owens was absent and I know he was continually absent during that period.

The Accused declines to cross-examine this witness.

Cpl J McKitchie

Fourth Witness for the Prosecution.

No. C-17285, Cpl. Almer Paul Stairs, H. Q. 3 Cdn Inf Bde, having been duly sworn states:

On approximately 15 Aug, I was instructed by C. Q. M. S. Ford to take over the work of Orderly N.C.O. at about 1600 hours because A/Sgt. Thibodeau had absented himself from duty at that time. At roll call at 2100 hours on that day, neither Cpl. Owens nor A/Sgt. Thibodeau answered to their names. The next day was my regular duty day as N.C.O. and at both roll calls the accused failed to answer his name when called. I have heard his name called several times on roll call and he was absent. Early in the afternoon of 2 Sep 40, Cpl. Owens came to me and asked me to report his return to the Orderly Room.

The Accused declines to cross-examine this witness.

Stairs RP Cpl

Fifth Witness for the Prosecution.

No. D-3012, S/Sgt. Malcolm William Peattie, H. Q. 3 Cdn Inf Bde, having been duly sworn states:

I am Staff Sergeant on H. Q. staff and have charge of the N.C.O's. duty roster. According to my records, the Orderly N.C.O. on 15 Aug 40 was A/Sgt. Thibodeau, E.

The Accused declines to cross-examine this witness.

M.W. Peattie

Sixth Witness for the Prosecution.

No. E-4042, Cpl. Jean Cote, H. Q. 3 Cdn Inf Bde, having been duly sworn, states:

Between 15 Aug 40 and 2 Sep 40, I have been on duty as Orderly N.C.O. and at every roll call I attended between those dates, Cpl. Owens failed to answer when his name was called. In the early afternoon at approximately 1400 hours, the Orderly N.C.O. reported to me that Owens had returned from absence.

On the 13th of August, I was asked by Cpl. Owens to take over his duty operating the canteen for the night and have been running it ever since. All money paid in by members to me, I turned over to Cpl. Owens as Secretary Treasurer on four or five occasions. This was on 13, 14, and morning of 15 Aug 40. The total I gave him amounted to £17. 10. 0, approximately, for which a receipt is held for £18. 10. 0., which amount includes proceeds of certain counter sales made by Owens. This money was to have been used by Cpl. Owens to pay certain bills due by the Mess. At the time, Cpl. Owens stated he was going to go and pay the bills. I know this was not done as C. Q. M. S. Ford investigated and found that the bills were unpaid. I feel that Cpl. Owens has spent this money, as otherwise he would turn it over to the Mess.

Cross-examined by the accused.

Question 1 — Did I not have the authority to pay the bills on specified dates from the N.C.O's. Mess.

Answer 1 — Yes.

Question 2 — Was it not specified that the first bills were to be paid between the 1st and 3rd Sep 40.

Answer 2 — Yes.

Question 3. — Did I not arrange to repay this sum as soon as I received same from Canada.

Answer 3 — Yes. Jean Cote Cpl

The Accused, No. M-30951, Cpl. Wilfred Reginald Owens, H. Q. 3 Cdn Inf Bde, states:

There was no intention to defraud as I came back to Camp voluntarily, stating to N.C.O. in charge of Mess that amount entrusted to me would be returned. Regarding the two air-rifles, these rifles were consigned to 3 Cdn Inf Bde without a tag by mistake. Rifles were turned over to C.Q.M.S. Ford and he, not knowing what to do with them, returned same to my custody. They were left in my tent waiting instructions from D.A.D.O.S. as to their disposal.

Wilfrid Owens.

Certified that Rule of Procedure 4 (c), (d), (e), (f), (g) have been complied with; taken down by me in the presence of and hearing of the accused this fourth day of September, 1940, at Effingham.

Capt.

First Witness for the Prosecution

Regt'l Number E.4042 Cpl. Cote, Jean, of Headquarters 3 Canadian Infantry Brigade, having been duly sworn, gave evidence as follows:

Examination by the Prosecution

Question 1. What is your number, name, and rank?

Answer 1. E.4042 Cpl. Cote, Jean

Question 2. To what formation do you belong?

Answer 2. Headquarters, 3 Canadian Infantry Brigade.

Question 3. Do you know the accused, Cpl. Owens?

Answer 3. Yes, sir.

Question 4. Do you remember 13 August, 1940?

Answer 4. Yes, sir.

Question 5. What happened between you and Cpl. Owens on that date?

Answer 5. On that night Cpl. Owens was in the mess and he asked me to take his place. He was secretary treasurer. He asked me to take his place for he was going out. It was quite near to pay day but he told me that I didn't have to accept any money. I replied to him "Don't you think that I ought to accept the money in case these boys go out and spend it?" So I replaced him the whole night long.

Question 6. Were you in the mess after that?

Answer 6. Yes, sir, all day of the 14 and 15 August and every day since that time.

Question 7. Up until noon of 15 August had you taken in any money?

Answer 7. Up to noon of 15 August I have taken in about £17 - 10s.

Question 8. What did you do with it?

Answer 8. The whole amount I handed to Cpl. Owens in four or five times.

Question 9. On what dates?

Answer 9. Between 13 and 15 August.

Question 10. When did you give him the last amount?

Answer 10. Maybe the 15 August at noon, I sold about £3.

Question 11. Altogether you gave him £17 - 10s?

Answer 11. Yes, sir.

Question 12. When did you first see Cpl. Owens after 15 August, 1940?

Answer 12. On 2 September in the afternoon.

Question 13. Where?

Answer 13. In camp near the guardhouse.

Question 14. Did you have any conversation with him?

Answer 14. Yes, sir.

Question 15. What did you talk about?

Answer 15. The first thing I asked him was if he had a good time etc., I asked him what happened to the money and he said "I don't know." After that he asked me, "About that money, I would like to send a cable home to replace it." He said, "I am broke and I would like you to find me some money for to cable."

Question 16. Did you find him the money?

Answer 16. Yes, sir.

Question 17. How much?

Answer 17. Ten shillings, sir.

Question 18. Who took Cpl. Owens' place as treasurer of the mess?

Answer 18. The President told me to take his place.

Question 19. Have you received any money from Cpl. Owens since 15 August?

Answer 19. No, sir.

Question 20. Has the mess, to your knowledge, received any money from Cpl. Owens since 15 August?

Answer 20. No, sir.

Question 21. When you say mess, to what mess do you refer?

Answer 21. The N. C. O.'s mess, Headquarters 3 Canadian Infantry Brigade.

Cross-examination by the Defence

Question 1. How long have you been with 3 Canadian Infantry Brigade?

Answer 1. Since 16 January last.

Question 2. Did you take over this bar on 13 August or 14 August?

Answer 2. I took it on 13 August during the night.

Question 3. Have you got a receipt from Cpl. Owens for the money?

Answer 3. Yes, sir, it is right on the table there.

Question 4. This is dated 3 September, 1940, did you get a receipt from Cpl. Owens?

Answer 4. No, sir.

Question 5. When you talk of the Sergeant's Mess, what is it? How is it constituted?

Answer 5. We have a President, Vice-President, and different members.

Question 6. What is its authorization?

Answer 6. By the Staff Captain.

Question 7. In writing?

Answer 7. I don't know.

Question 8. Who keeps the minutes for the mess?

Answer 8. They are on my desk.

Question 9. Is there any authorization for starting the mess in the minutes?

Answer 9. No, sir.

Question 10. Why didn't you take a receipt from Cpl. Owens?

Answer 10. He never wanted to give me one.

Question 11. How long have you known Cpl. Owens?

Answer 11. Quite some time, sir.

Question 12. You thought, as he was a brother N. C. O., that it would be alright to give him the money without a receipt?

Answer 12. Yes, sir.

Question 13. You didn't think that he had stolen the money but that he would return it because he had spent it?

Answer 13. Yes, sir.

Question 14. You saythat you loaned ten shillings to the accused?

Answer 14. Yes, sir, I borrowed it to loan it to him.

Question 15. You know that you will get the money back?

Answer 15. I hope so, sir.

Second Witness for the Prosecution — Captain J. K. Hjalmarson of Headquarters, 3 Canadian Infantry Brigade, having been duly sworn, gave evidence as follows:

Examination by the Prosecution

Question 1. What is your name and rank?

Answer 1. I am Captain J. K. Hjalmarson, Staff Captain of Headquarters, 3 Canadian Infantry Brigade.

Question 2. What are your duties in connection with messes at Brigade Headquarters?

Answer 2. Messes come under my supervision as Staff Captain.

Question 3. Have you any mess besides the officer's mess at Brigade Headquarters?

Answer 3. An N. C. O.'s mess formed about a month ago.

Question 4. Tell us what you know about the organization of that mess?

Answer 4. Some time ago the question was put forward about obtaining permission on behalf of the N. C. O.'s to start their mess. I approached the Brigadier and he concurred so I passed my permission on to the group to carry on. I did this verbally.

Question 5. To your knowledge what has happened to that mess since?

Answer 5. The N. C. O.'s reported that they had had a meeting, selected a slate of officers and reported verbally as to their names. C.Q.M.S. Ford was made president, Cpl. Owens was secretary treasurer, Sgt. Thibodeau had some executive position, I think it was called secretary pro tem, what it was I don't know, and then there was a committee consisting of Sgt. Colbran, Cpl. Sharp and L/Sgt. Little and, I think, three others, I don't remember.

Question 6. Are there any other messes in connection with Headquarters 3 Canadian Infantry Brigade other than those you mention?

Answer 6. No.

Question 7. Since Cpl. Owens returned on 2 September, have you seen him?

Answer 7. Yes, sir.

Question 8. Where?

Answer 8. Mostly in the vicinity of the guard tent where he was confined.

Question 9. Have you had any conversation with him?

Answer 9. I had conversation with him on the afternoon of his return and had him up before me on the morning following his return and remanded him for Court Martial.

Question 10. I'll show you a document, you needn't say what it is, when did you get this, before or after you charged him?

Answer 10. Before he was charged.

Question 11. What conversation did you have with him before you got this?

Answer 11. I asked him questions relating to his absence, to his whereabouts, and particularly in connection with the other absentee, Sgt. Thibodeau, in whom I was interested in securing information. I asked him questions about the amount of money he was alleged to have in his possession at that time and I asked him if he would care to clarify the situation and sign a statement as to the amount involved.

Question 12. Did you tell him anything?

Answer 12. In what way?

Question 13. That is up to you.

Answer 13. I warned him before making any answers that he would not have to say anything or do anything in connection with this inquiry but he replied that he was, not in these words but in this sense, that he was fed up with the whole thing and was desirous of getting a quick clarification. In connection with the money he requested permission that he be given an opportunity to wire back to Canada.

Cross Examination by the Defence

Question 1. What was the exact date that authority was granted for this mess?

Answer 1. I can't answer that question as to exact date as authority was given verbally.

Question 2. Is there any record such as minutes or constitution?

Answer 2. I was shown a rough copy of the minutes and I insisted at the time that the records be signed and lodged with me.

Question 3. Have you investigated this?

Answer 3. I was assured that they would be given to me just as soon asthey could get them.

Question 4. It other words, it looks as though records had not been kept?

Answer 4. The records were available only in this slipshod fashion and they were not signed as I instructed.

Question 5. So far as we are concerned, we can assume that there are no official records?

Answer 5. All I can say is that they have not been placed in any completed form.

Question 6. You have never seen them?

Answer 6. I have seen them in rough sketch form.

Question 7. When did you see them?

Answer 7; In the first half of the month of August, 1940

Question 8. Have you seen any financial statements of this mess?

Answer 8. No, I have not.

Question 9. Did you ask for one?

Answer 9. Yes, I did.

Question 10. I suppose that when this question of money arose you became concerned about the financial aspect of the mess?

Answer 10. I ordered the President to have a complete inventory and to ascertain if any money had been paid to wholesalers and exactly what money was owing.

Question 11. At that time were there any books or accounts showing any bills unpaid or accounts due, cash on hand or cash that should be on hand?

Answer 11. I have no knowledge of any other than what I mentioned.

Question 12. To your knowledge there are no records of this mess?

Answer 12. Apart from the draft copy there are none that I know of.

Question 13. Cpl. Owens has been with Brigade Headquarters since January?

Answer 13. That is true.

Question 14. That amount of money arrived at in this case, was that submitted by Cpl. Owens are agreed upon by all parties concerned?

Answer 14. That is right.

Question 15. Have you know the accused for some time since he has been here?

Answer 15. Not personally, just officially.

Question 16. What is his position?

Answer 16. He is chief clerk attached to the R.C.A.S.C. here.

Question 17. Is that a responsible position?

Answer 17. Yes, I believe so.

Examination by the Court

Question 1. These duties of Cpl. Owens as Secretary Treasurer, are they in addition to his duties as clerk?

Answer 1. Yes, we have no one we can detail to take that position within our establishment.

Question 2. Are there books of account and receipt books actually kept by the mess committee or is there a provision in the minutes that they will be kept from that date?

Answer 2. Unfortunately, I can't say.

Third Witness for the Prosecution — Regt'l Number F.42555 C.Q.M.S. Ford, W. E., of Headquarters, 3 Canadian Infantry Brigade, having been duly sworn, gave evidence as follows:

Examination by the Prosecution

Question 1. What is your number, name, and rank.

Answer 1. My number is F.42555 William Eugene Ford and my rank is C.Q.M.S.

Question 2. What formation are you attached to?

Answer 2. Headquarters, 3 Canadian Infantry Brigade.

Question 3. What do you know about the organization of the N. C. O.'s mess, 3 Canadian Infantry Brigade Headquarters.

Answer 3. I am the President.

Question 4. How do you know you are the president?

Answer 4. I was elected president.

Question 5. When?

Answer 5. I don't remember.

Question 6. Approximately?

Answer 6. Two or three weeks ago.

Question 7. What other officers were there?

Answer 7. Cpl. Owens as Secretary Treasurer, Sgt. Thibodeau as Secretary Pro Tem, and a committee of Sgt. Gardner, Sgt. Colbran, Sgt. LaRose, Sgt. Thibodeau, L/Sgt. Little,

and Cpl. Sharp.

Question 8. You know Cpl. Owens?

Answer 8. Yes, sir.

Question 9. He is the one you refer to a being secretary treasurer?

Answer 9. Yes, sir.

Question 10. Do you remember 16 August in connection with Cpl. Owens?

Answer 10. Yes, sir.

Question 11. What happened on that date?

Answer 11. We found that he was absent from parade at 0800 hours.

Question 12. Was this meeting at which you were elected president held before or after that?

Answer 12. Before.

Cross-Examination by the Defence

Question 1. Sgt. Ford, you are the president of this mess, on what date were you appointed?

Answer 1. I don't know sir, I can't be certain.

Question 2. I want to know when you were appointed president?

Answer 2. I don't know, sir.

Question 3. You would rather not make a statement as to date?

Answer 3. I don't want tosay anything I am not certain of.

Question 4. Where are the minutes and constitution of this mess?

Answer 4. Here,sir.

Note: Documents marked "Exhibit A-2" are produced by C.Q.M.S. Ford and handed to the court.

Question 5. There are not any further records, this is a complete record of the N. C. O.'s mess at Brigade Headquarters?

Answer 5. Yes, sir.

Question 6. Is there any written authority from the Brigadier to establish this mess?

Answer 6. No, sir.

Question 7. Any authority from any one else in authority that you can produce?

Answer 7. No, sir.

Question 8. What is this "Exhibit A-2"?

Answer 8. It is the constitution drawn up

Question 9. Read me the constitution in that.

Answer 9. I must explain what it is first. At the meeting I was elected president. According to R.R. Can. it was supposed to be a sergeants' mess but we did not have enough sergeants so we decided to form an N.C.O.'s mess and we spoke to Captain Hjalmarson and changed it, the rules

for sergeants' messes to apply as much as we could make it.

Question 10. This document is not dated?

Answer 10. No, sir.

Question 11. There is no authorization incorporated in the minutes?

Answer 11. No, sir.

Question 12. What are the rules of the sergeant's mess - first of all, concerning formation?

Answer 12. I don't know.

Question 13. What about statements of account, are they in this?

Answer 13. Cpl. Cote has that, sir.

Examination by the Court

Question 1. On the 16 August did you have any authentic account books stating what so and so was charged and how much was paid?

Answer 1. No, sir, just on slips of paper.

Question 2. No authentic books, then, no journal, no cash-book, etc.

Answer 2. I hadn't seen them up to that date.

Question 3. Did you see them after that date?

Answer 3. We have a book which we bought showing we bought so much and returned so much on a certain date.

Question 4. Who asked Cpl. Cote to take the place of Cpl. Owens on 13 August?

Answer 4. I think Cpl. Owens asked him, I can't say.

Question 5. Cpl. Owens was still responsible for the money?

Answer 5. Yes, sir.

Fourth Witness for the Prosecution — Regt'l Number E.61552 Sgt. Thibodeau, E. of Headquarters, 3 Canadian Infantry Birgade, having been duly sworn, gave evidence as follows:

Examined by the Prosecution

Question 1. What is your number, name and rank?

Answer 1. Sgt. Emile Thibodeau, E.61552.

Question 2. For your information, Sgt. Thibodeau, Cpl. Owens has pleaded guilty to being absent without leave as charged. Do you know Cpl. Owens?

Answer 2. Yes, sir.

Question 3. Do you remember 15 August, 1940?

Answer 3. Yes, sir.

Question 4. What did you do on the afternoon of that date?

Answer 4. On the afternoon of 15 August I left camp at about three o'clock in the afternoon with the accused.

Question 5. Where did you go?

Answer 5. Down to the station, I couldn't swear which one it was.

Question 6. What places did you visit?

Answer 6. We went to London, Crewe, Blackpool and Hounslow.

Question 7. Was anybody with you?

Answer 7. I was with the accused.

Question8. How long were the accused and you together on the trip?

Answer 8. I couldn't say we were together all the time, quite often I went my way and he went his.

Question 9. How much money did you take with you?

Answer 9. When I left I had about £2.

Question 10. You went to London first?

Answer 10. Yes, sir.

Question 11. Where did you stay there?

Answer 11. We didn't stop, we went on to Crewe.

Question 12. How long did you stay in Crewe?

Answer 12. One night.

Question 13. Where did you stay in Crewe?

Answer 13. At the hotel.

Question 14. Cpl. Owens was with you then?

Answer 14. Yes, sir.

Question 15. Who paid the bill?

Answer 15. I don't remember.

Question 16. Do you know how much money Owens had when he went with you?

Answer 16. I don't know how much he had.

Question 17. What did youdo with your two pounds?

Answer 17. Of course I spent them.

Question 18. How long did that take you?

Answer 18. About two days.

Question 19. What did you do for money after that?

Answer 19. I borrowed some from Cpl. Owens.

Question 20. How much.

Answer 20. Three times I borrowed £2.

Question 21. Do you know how much Cpl. Owens spent when you were with him?

Answer 21. I don't know, sir.

Question 22. Do you know of your own knowledge how much pay he drew on the 15 August?

Answer 22. I was not present at the time he was paid and he did not tell me how much he was paid.

Question 23. When did you last see Cpl. Owens on that trip?

Answer 23. I came back here on Tuesday and I saw him last either on the Thursday or Friday pervious at Hounslow.

Question 24. You stayed at Crewe one night?

Answer 24. Yes, sir.

Question 25. Wheredid you go then?

Answer 25. Blackpool.

Question 26. How long did you stay in Blackpool?

Answer 26. Six or seven days.

Question 27. Where did you stay there?

Answer 27. At a private house.

Question 28. Did you pay anything for your board or lodging?

Answer 28. I did not, sir.

Note: Objection by the Defence

Question 29. Do you know if anything was paid for your lodging at Blackpool?

Answer 29. I can't say exactly but it wasn't much.

Question 30. Who paid it?

Answer 30. I think the accused did, sir.

Question 31. How much?

Answer 31. I am not sure but I think all they wanted was £2.

Question 32. Where did you go from Blackpool?

Answer 32. To London, sir.

Question 33. Where did you stay there?

Answer 33. From London we went to Hounslow and stayed with a friend there.

Question 34. What did you do for entertainment during the trip?

Answer 34. We didn't do much together, he went to see what he was pleased to visit and I did the same.

Question 35. Apart from borrowing six pounds from him did you have any conversation with him about money?

Answer 35. I might have, I don't remember having done so.

Question 36. To your own knowledge, do you know where he got the money he spent on that trip with you?

Answer 36. I do not know the source of any of the money that he spent.

Cross-Examined by the Defence

Question 1. Sgt. Thibodeau, you had been drinking on this trip quite a lot?

Answer 1. Yes, sir.

Question 2. You just went absent, sort of fed up with things?

Answer 2. Yes, sir.

Question 3. You have some means, have you not, in Canada?

Answer 3. Yes, sir.

Question 4. Did you not draw on these means to go on this trip?

Answer 4. I wired home after I left for money.

Examined by the Prosecution

Question 1. Could you get the money?

Answer 1. It has arrived in England now, sir.

Question 2. You didn't have it on the trip?

Answer 2. I received money from friends in Hounslow.

Question 3. Have you paid Cpl. Owens?

Answer 3. No, sir.

First Witness for the Defence — Regt'l Number E.4042 Cpl. Cote, Jean of Headquarters, 3 Canadian Infantry Brigade, having been duly sworn, gave evidence as follows:

Examined by the Defence

Question 1. Cpl. Cote, have you the books of accounts of the N.C.O.'s mess?

Answer 1. Yes, sir, I have the book for credit for the boys who were buying.

Note: The Book is produced, Marked "Exhibit A-3" and handed to the court.

Question 2. In your summary of evidence did you state as follows. "I gave him the amount of £17 -- 10s [illegible] approximately". In another place in your evidence you say "All money brought me I turned over to Cpl. Owens." On how many occuasions did you turn over the money to Cpl. Owens?

Answer 2. On 13 August once, On 14 August three times, on 15 August twice.

Question 3. You say definitely that you gave money to Cpl. Owens on five different occasions?

Answer 3. Yes, sir.

Question 4. You are sure of that?

Answer 4. four or five.

Question 5. Which is it, four or five?

Answer 5. Either four or five times, I don't exactly remember.

Question 6. Cpl. Cote, hwo much money did you turn over to Cpl. Owens?

Answer 6. About seventeen pounds ten shillings.

Question 7. What do you mean, about?

Answer 7. I mean that it is not less than seventeen pounds ten shillings.

Question 8. How did you give this money to Cpl. Owens?

Answer 8. From hand to hand, sir.

Question 9. How much money did you give Cpl. Owens on the first occasion?

Answer 9. I don't know.

Question 10 On the Second?

Answer 10. I don't know.

Question 11. On the third?

Answer 11. I don't know.

Question 12. Where did this handing over of money take place?

Answer 12. In the mess.

Examined by the court

Question 1. Cpl. Cote, you state that you gave the money in the presence of witnesses to Cpl. Owens, one or two witnesses?

Answer 1. I know there was one.

Question 2. Did the witness see how much money was there?

Answer 2. I don't know, sir.

Question 3. Did Cpl. Owens count the money?

Answer 3. Cpl. Owens said it was not necessary always when I gave him the money.

S. P. 8.3.

Typ. Oudes, E. A.

SCHEDULE.

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

Accused: B·60766 TPR. EDWARD ALFRED OWLES 11 CDN ARMD 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 8 (2)	NOT GUILTY	NOT GUILTY	
2nd AA SEC 40	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, and in loss of kit see RP 44 fn 6.)

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

(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 E7.)

Sentence Awarded by the Court:

TO UNDERGO DETENTION FOR SIXTY DAYS.

(Sgd) John A Bourne - Major 13 JULY 45 (Sgd) D. R. Cameron 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(2). 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 & Sentence of the Court

~~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) [illegible] Lt Col

Date 1st July 45 Commanding 11 Can Inf Bde Confirming Officer.

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

Accused.	Date.	Signature of Offr.
Tpr E. Owles - B60766 11 Can Armd Regt.	17 Jul 45	Dunstan McNichol Capt Adjt 11 Can Armd Regt. (Ord R)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160. 5P-83

CFAR6 (To Encl of AFA81 40-1 & 8-1608) (10-44)

FIELD GENERAL COURT-MARTIAL

4/38B

24 JUL 1945 G.H.Q. (AK)

Convened by Order of Lt-Col R B Somerville A/Comd 11 CDN ARMD BDE dated 9 July 1945

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 60766	Tpr	Edward Alfred	OWLES	11 CDN ARMD REGT

PROCEEDINGS REVIEWED
24 July 45
[illegible] Capt
REVIEWING OFFICER, HQ BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held at (place, country) HOLLAND on (date(s)) 13 JULY

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 (~~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 0930 hours trial commences.(1)

(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.)

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 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 S&T WELLS, J.J. as interpreter? Ans NO SIR

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 their ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	DR CAMERON		12 CDN ARMD REGT
Member	CAPT	RH HEGGIE		12 CDN ARMD REGT
Member	CAPT	IA ALLISON		14 CDN ARMD REGT
Judge-Advocate	MAJOR	J.A. BOURNE	DJA	5 CDN ARMD DIV
Prosecutor	LIEUT	S. JOUBARD		11 CDN ARMD REGT
Defending Offr	LIEUT	J.D. SEGSWORTH		11 CDN ARMD 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 DI p 33.)

A8. The accused ..... before arraignment makes(s) (no) ~~set~~ 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 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(*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* 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 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 (a) 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 words 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)
(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 GIVE EVIDENCE AS WITNESS. 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), ~~of sentence~~, of Not Guilty, and states to the accused that the finding(s) of the Court on the SECOND 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) (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 YES. (WRITTEN STATEMENT OF ABSENT WITNESS ATTACHED.)
(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 "G" and Ex "H" 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.....(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 40. 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.

13 July 48

B6.766 Tpr Owles E.A.

The a/m has been medically examined to-day and found fit to undergo trial by court martial.

R C Mellow Capt

DRL

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 60766	Tpr		Edward Alfred	OWLES	11 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) 9 Jul 1945 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	D R CAMERON	12 CDN ARMD REGT

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	R H HEGGIE	12 CDN ARMD REGT
Capt	I A ALLISON	14 CDN ARMD REGT

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	J S HUNTER	14 CDN ARMD REGT

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Major	J A BOURNE	HQ 5 CDN ARMD DIV

On Active Service in the Fd

in HOLLAND (Country.) — R B McIntosh (Signed personally. RP 105 fn 2.) — Lt-Col (Rank.)

Date 9 July 1945 — A/Commanding 11 CDN INF BDE

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

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

D.R.C.

CHARGE SHEET

The accused, B60786 Tpr Edward Alfred OWENS, 11 Cdn Armd Regt (Cnt R), a soldier of the Cdn Army Overseas, is charged with:

First Charge
AA Sec 69(1)

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

in that he

In the Field, in Holland, on 4 Jun 45 said to B61192 Sgt SM HILLS C H, "You're not going to be a cunt, are you" and "you're a big bastard", or words to that effect.

Second Charge
AA Sec 70

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field, in Holland, on or about 4 Jun 45, improperly wore the insignia of rank of a Sgt, not being entitled to wear the same.

(A Kirkman) Lt-col
Commanding Officer
11 Cdn Armd Regt (Cnt R)

In the Field,
Jul 45.

"To be tried by FIELD GENERAL COURT MARTIAL"

(R B Somerville) Lt-Col
A/Comd 11 CDN INF BDE

In the Field;
9 July 1945

D.R.L.

D3

First Witness Prosecution — E 21314 Cpl Paquet, AR, 11 Cdn Armd Bde having been duly sworn is examined by the Prosecution through the Interpreter (French to English)

On the 4 June 45 at 0045 hrs I was awakened by a noise and I went and saw what was happening in the kitchen. I then went and saw SSM Hills. We went to the kitchen and found Spr Oules and Spr Roberts. They were sitting. I recognize Spr Oules as the accused. Spr Oules was drunk. SSM gave him orders to return to his room. SSM ordered Spr Roberts to help him back to the billets. SSM said to accused that he was on charge for wearing a Sgts tunic. The accused did not reply to this.

Cross Examination

I think the accused was drunk because he could not walk alone. Accused used no violence. I knew accused before this incident. I did not hear the accused use the words mentioned in the first charge

No Re-Examination :-

No Questions by Court :-

Questioned by JA :-

I saw accused wearing a tunic with Sgts stripes when I saw him.

(RP 83(B) complied with)

Cross Examination :-

I don't know if accused was trying to break into the kitchen, or not. I am sure of the words accused used. Up till then I was on best of terms with accused. I have known him since July 41. He has always been respectful to me.

No Re-Examination :-

Questioned by Court :-

I believe there was accused but I don't know. The stripes were roughly sewn on.

Questioned by JA :-

On 4 June 45 I was a Sgn SM and accused was a Spr. I was not wearing my badges of rank at the time. The accused knows I am a Sgn SM. The accused recognized me and called me by my first name.

(RP 83 (B) complied with)

Third Witness Prosecution — A 35699 Spr Robert T.V., 11 Cdn Armd Regt, having been duly sworn, is examined by the Prosecutor

On 4 June 45 at about 0030 hrs I got off a truck. I helped Cowles off as he was pretty well drunk. I recognize the accused as Spr Cowles. I left him with some other men and I went to my room. I went down stairs again to look for accused

D3

First Witness Prosecution

E 21314 Cpl Paquet, A.P., 11 Cdn Armd Regt having been duly sworn is examined by the Prosecutor through the Interpreter (French to English)

On the 4 June 45 at 0045 hrs I was awakened by a noise and I went and saw what was happening in the kitchen. I then went and saw SSM Hills. We went to the kitchen and found Tpr Owles and Tpr Roberts. They were sitting. I recognize Tpr Owles as the accused. Tpr Owles was drunk. SSM gave him orders to return to his room. SSM ordered Tpr Roberts to help him back to the billets. SSM said to accused that he was on charge for wearing a Sgts tunic. The accused did not reply to this.

Cross Examination

I think the accused was drunk because he couldn't walk alone. Accused used no violence. I knew accused before this incident. I did not hear the accused use the words mentioned in the first charge

No Re-Examination:-

No Questions by Court:-

Questioned by JA:-

I saw accused wearing a tunic with Sgts stripes when I saw him. (RP 83(B) complied with)

Second Witness
Prosecution

B 61192 S.Sgt Hills, C.H., 11 Cdn Armd Regt,
having been duly sworn is examined
by the Prosecutor.

On morning of 4 June 45 at about 0045 hrs
I was called by Cpl Paquet and I went
with him and saw Spr Owles, the accused,
in the areaway between the mess hall and
the kitchen. I ordered him to go to his
bed and told him I would see him in
the morning. The accused replied. "You
are not going to be a cunt, are you" I
ordered the accused to bed and the
accused said "You are a big cock sucker"
I noticed accused was wearing three
chevrons on each arm. I asked him
why he had them on and accused
replied "I had to get a drink somewhere"
I again ordered him to go to bed and told
Spr Roberts to help him. Later when I
went to my own room I heard something
upstairs and went up to see that accused
went to bed. When he saw me coming
he said "Here comes the big bastard
now". The next morning he was charged.
Cpl Paquet was present in the kitchen.

Cross Examination :-

I dont know if accused was trying to break into the kitchen, or not. I am sure of the words accused used. Up till then I was on best of terms with accused. I have known him since July 41. He has always been respectful to me.

No Re-Examination :-

Questions by Court :-

I believe tunic was accuds but I dont know. The stripes were roughly sewn on.

Questioned by JA :

On 4 June 45 I was a Sgt SM and accused was a Spr. I was not wearing my badges of rank at the time. The accused knows I am a Sgt SM. The accused recognized me and called me by my first name.

(RP 83 (B) complied with)

Third Witness Prosecution — A 55699 Spr Robert T.V., 11 Cdn Armd Regt, having been duly sworn, is examined by the Prosecutor

On 4 June 45 at about 0030 hrs I got off a truck. I helped Cowles off as he was pretty well drunk. I recognize the accused as Spr Cowles. I left him with some other men and I went to my room. I went down stairs again to look for accused

I found him where the meals are served. He was sort of sitting down, partly lying. About then the Sgt Major and the cook walked in. Sgt Major told me to take accused to bed. When we got upstairs cook was sick and passed out. Accused had on a Sgts tunic. I never heard accused call Sgt Major names. I wasn't paying attention. I was not exactly sober but I knew what I was doing. I was about 10 ft from Sgt Major and accused. I don't remember seeing Sgt Major later.

Cross Examination :-

Accused could hardly walk. He didn't show any violence to A.N.I Hills. The tunic was not that of accused. It was one I was picking for a Sgt.

No Re-Examination :-

Questioned by Court :-

When Sgt Major said to go to bed I don't know if accused said anything. I am not sure. I walked away while they were talking and waited nearby.

(RP 83 (B) complied with)

Prosecution produces letter signed by C.O. of accused, pursuant to AA Sec 163 (1) (b) (ii). Marked Exhibit "F"

First Witness Defence — The accused, having been duly sworn is examined by the Defending Offr.

On evening of 3 June I was out with Sgts. Mc Golrick & Berwick. We intended having a celebration as we thought we were due for repat draft. We had a few drinks in town. The last thing I remember was drinking. I next remember waking up & thinking I was due to go to England. I saw Sgt Major and he warned me I was up on these charges. I know nothing about what happened till I was up before the Major. I must have been very drunk. I had everything to gain by staying out of trouble. My trip home and leave to UK were cancelled. I have used that kind of language before. With these I know even Sgts, we say such things, not seriously but because we know one another. The tunic I was that night did not have Sgts stripes on. When I saw it next morning it did not have stripes on. I wore another tunic the next morning. I don't remember wearing Sgts stripes.

Cross Examination.—

I think the last I remember was around

2100 hrs. I can't deny I wore the stripes or swore at Sgt Major because I can't remember.

No Re-Examination:

Questioned by Court:-

I wore my own beret when I left for town

Questioned by DA:-

I saw a beret next morning, on which I had been sick. It was the same beret I had on the night before. There were no stripes on it. I don't remember wearing any other beret that night. The other charge I was up on was concerned with trying to enter the kitchen.

(RP 83 (B) complied with)

Second Witness Defence B112434 Cpl Bourne RA, 11 Cdo Armd Regt

having been duly sworn, is examined by the Defending Offr.

I recognize accused as Spr Weeks. I have known him for 9 months and he is in same Sp as I am. The accused's language is inclined to be very hard and profane. A lot of us use coarse language, which if taken seriously would be cause of bad feelings amongst ourselves. Some of expressions accused uses are "you sad son-of-a-bitch"

and "you rotten bastard". They are not meant as insults. I have never heard accused say such things to an NCO, including myself.

Cross Examination :-

No Questions by Court or JA

(RP 83(1) complied with)

Closing Address of defending Offr

(1) Refers to MML p. 23 paras 47 & 48.
(2) Refers to MML p. 58 para 71
(3) When accused said about getting a drink after being questioned by SM about stripes, he may have misunderstood SM.

Prosecutor's Closing address

1 Evidence proves charge.
2 drunkenness no excuse.

Summing up of JA is attached

E1

Statement of Lt RC Smyth is attached. Witness not able to attend by reason of proceedings on draft. Statement attached.

SUMMING UP BY JA

1 Duty of JA to sum up and advise the Court on the law. Court should accept advice of JA on the law.

2 Court is the sole judge of the facts.

3 Credibility of the witnesses is for the Court. May believe whole of a witness' evidence or disbelieve it entirely, or may believe parts and disbelieve other parts, or may believe one witness' evidence as against another.

4 Accused is presumed to be innocent until he is proved guilty.

5 Burden of proof is on the Prosecution.

6 Accused is entitled to the benefit of any reasonable doubt in the minds of the members of the Court.

7 Reasonable doubt defined.

8 Refers to fn 5 to AA Sec 8(2) on insubordinate language.

9 It must be proved accused knew that he was speaking to a superior offr as defined by AA Sec 190(7).

10 Re second charge. Document from CO stating accused has not held rank of sgt is evidence under AA Sec 163(1)(b)(ii).

11 Wearing badges must amount to conduct to prejudice of both good order and military discipline, and be improper.

12 Refers to MML Chapter III para 48 on drunkenness as a defence.

13 Refers to RP 44(9).

14 President, Prosecutor and Defending Offr state they wish nothing added to address of JA.

12 July 45.

E1

To the President and Members.

Re, Tpr. Owles E A.

I have been Tpr. Owles' troop officer since Feb 45 and in that time his conduct was above reproach. His action as a loader operator showed a very good knowledge of his work, and never did he show signs of insubordination or a desire to hinder the efficiency of his crew.

In my mind Tpr Owles is a good soldier and in many ways a victim of circumstances.

R. Y. Lamp Tdr.

Witness. [illegible] Capt.

EX "F"

B60766 Tpr OWLES H A
11 Cdn Armd Regt (Cnt R)

This is to certify that since the m/n
1 soldier joined this unit on 1st day of Jan 45
he has never held the rank of Sgt.

Signed in the Field, this 6th day of July, 1945.

(G [illegible] Lt-Col
Commanding Officer
11 Cdn Armd Regt (Cnt R)

ARMY FORM B.296.

EX "G"

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
B60766	Trooper	OWLES, E.A.	The 11th Cdn Armd Regt (Ont.R)

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 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	Sec. 40 AA	Nil times	Four	times.
For	Sec. 15 (1) AA	Six times	Nine	times.
For	Sec. 11 A.A.	Two times	Two	times.
For		times		times.
For		times		times.

~~Number of instances of gallantry or distinguished conduct~~, D.N.:N.

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

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

~~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.~~ D.N.

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~~ D.N.:N.

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, 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 YRS. 11 MOS. 19 DAYS D.N.:N.

6. The date of his ~~commission~~ attestation D.N.:N. specified in his record of service ~~attestation paper~~ is 18 SEP. 39 D.N.:N.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A.

8. The accused is entitled to deferred pay or gratuity in respect of N/A. service.

9. The accused is entitled to reckon N/A. 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*)). 1939-43 STAR.

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 N/A. and in his regiment (*or* corps *or* department) the rank of N/A dated N/A.

(*22847) Wt.31703/1977 10,000 10/42 A.& E.W.Ltd. Gp.698
(23927) Wt.52858/1287 32,000 5/43 " "

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. B60766 Rank Trooper Name OWLES, E.A. of 11 Cdn 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.

D. 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 22 day of Jun 45.

Duncan McNichol, Capt & Adjt

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,	

D. Nil

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

FIELD CONDUCT SHEET.

*No. B60766 Name OWLES, E.A. Sq., Batty., or Company Corps Sheet No. 3 Date of Enlistment 18 Sep 39 Army Form B122 Sheet No.

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk G.C. Badges Long Service and G.C. Pay Signature O.C. Company, etc. D.H. Lander Ex "A"

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 and Remarks
				Last sheet destroyed 18 Mar 42. Last entry 6 Mar 42. D.H. Lander				
Field	3 Apr 42	Tpr		Sec 40 AA WOAS Conduct to the prejudice of good order etc. did make a false statement regarding his duty.	Cpl Munro J. L/Cpl Stocks,W.	14 days det'n.	4 Apr 42	G.Y. Masson Lt-Col.
Field	16 Jun 42	Tpr		Sec 15(1)AA. WOAS Absent from 0620 hrs 16 Jun 42 until 0645 hrs 16 Jun 42 Missing PT Parade. Absent 25 mins.	Sgt Mawson,E. Sgt Hill C.H.	7 days CB	16 Jun 42	E.A.C. Amy Lt.

* Serial Number in case of enemy prisoner of war.

P.T.O.

Wt. 5591/2/1751 1,500M 2/44—W.A.Y. & Co.—47—214

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 and Remarks
Field	1 Jul 42	Tpr		Sec 15(1)AA WOAS Absent from 2300 hrs 1-7-42 until 0800 hrs 2-7-42. Absent 9 hrs.	Sgt Fox G.A. Sgt Parkes, H.	14 days CB	2 Jul 42	R.B. Kerr, Major
Field	13 Oct 42	Tpr		Sec 40 AA. Conduct to the prejudice etc. becoming unfit for duty by reason of indulgence in alcholic stimulants.	Capt. Dalrimple Cpl.Como, J.A.	14 days detention	15 Oct 42	R.H. Noble Major
Field	24 Oct 42	Tpr		Sec 40 AA Conduct to the prejudice etc improperly in possession of alchol the property of Chattfields, Limited.	Document-ary	168 hrs detention	29 Oct 42	R.H.Schell, Major Forfeits 7 days pay FR&I 149(1)(b).

FIELD CONDUCT SHEET.

Army Form B122
Sheet No.

*No. B60766 Name OWLES, E.A. Sq., Batty., or Company } Corps Date of Enlistment } 18 Sep 39

Date of last entry in Company Conduct Sheet } No. and date of last drunk } G.C. Badges } Long Service and G.C. Pay } 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 and Remarks
Field	24 Apr 43	Tpr		Sec 15(1)AA WOAS absent from 2359 hrs 24 Apr 43 until 0740 hrs 25 Apr 43 Absent 7 hrs 41 mins.	Sgt. Hills, C.H.	Awarded a forf of 28 days pay.	26 Apr 43	J.T.F. Orr, Major 1 dys pay FR&I 149(1)(a) 28 dys pay FR&I 149(2) Total 29 days.
Field	13 Jun 43	Tpr		Sec 40 AA WOAS obstructing an M.P. in execution of his duties. (2) Threatening an NCO of the Mil Police.	Documentary (Pro Coy)	28 days detention	17 Jun 45	Forf 28 days pay FR&I 149(1)(b)

* Serial Number in case of enemy prisoner of war.

P.T.O.

Wt. 52912/1751 1,500M 2/44—W.A.Y. & Co.—47—214

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 and Remarks
Field Italy	20 Jan 44	Tpr		Sec 15(1) AA WOAS absent from 1900 hrs 20 Jan 44 until 0820 hrs 21 Jan 44 (13 hrs 20 mins)	Sgt Parkinson Cpl Hughan	14 days detention	25 Jan 45	R.L. Purves Lieut-Col.
Field	22-4 44	Tpr		Sec 15(1)AA WOAS Absent without leave from 1530 hrs 20 Apr 44 to 0700 hrs 21 Apr 44. Absent 15 hrs 30 minutes)	Cpl Cook, F.	27 days pay	23-4-44	R.L. Purves Lieut-Col. Forf 26 days pay FR&I 149(2) Aut. Forf 1 day pay FR&I 149(1)(a)

FIELD CONDUCT SHEET.

Date of Enlistment } 18 Sep 39 Army Form B122 Sheet No.

*No. B60766 Name OWLES, E.A. Sq., Batty., or Company } Corps

Date of last entry in Company Conduct sheet } No. and date of last drunk } G.C. Badges } Long Service and G.C. Pay } 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 and Remarks
Field	29-4-44	Tpr		Sec 15(1)AA WOAS Absent without leave from 0630 hrs 29 Apr 44 to 1215 hrs 29 Apr 44.	Cpl Cook,F. Sgt Gazley,L.	28 days FP	30-4-44	R.L. Purves Lieut-Col. No pay stoppage
Field	1 Oct 44	Tpr		AA Sec 15(1) AWL 3 hrs 30 mins. AA Sec 11 Failing to comply with CS Orders	Sgt Leibsom, A.	5 days FP and forf 5 days pay FR&I 149(2)	2 Oct 44	Maj. G.C. Smith
Field	13 Oct 44	Tpr		AA Sec 15(1) AWL 7 days 3 hrs.	Sgt Cameron	16 days FP. Forf 16 days pay. FR&I 149(2)	4 Nov 44	Maj G.C. Smith Forf 8 days pay FR&I 149(1)(a)

P.T.O.

* Serial Number in case of enemy prisoner of war.

Wt. 52912/1751 1,500M 2/44—W.A.Y. & Co.—47—214

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 and Remarks
Field	12-11 44	Tpr		AA Sec 15(1) AWL 1 hr 15 mins	Tpr Quinn Sgt Hoyt	Forf 5 days pay FR&I149(2)	14-11-44	Capt. S.A. Nicol Sentence to run concurrently with 16 dys FP and 16 dys forf awarded 4 Nov 44.
Field	20-11 44	Tpr		AA Sec 11. Failing to book out of camp.	SSM Phillips	28 dys FP and forf 28 days pay. FR&I 149(2)	22-11 44	G.C. Smith, Major

Certified true copy from the records in my custody.

Dunstan McNichol Capt. Adjt.

(Dunstan McNichol) Capt & Adjt.
The 11th Cdn Armd Regt (Ont.R)
O. i/c Regimental Records.

SUMMARY OF EVIDENCE

in the case of

B60766 Trooper Edward Alfred OWLES, The 11th Canadian Armoured Regiment (Ontario Regiment)

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

1ST WITNESS FOR THE PROSECUTION

B61192 SSM Hills, C.H., B Sqn The 11th Cdn Armd Regt (Ont.R), having been duly sworn states:

"At 0045 hrs 4 Jun 45 I was awakened by Cpl Paquet, the Squadron Cpl Cook, to investigate and see who was trying to get into the kitchen. On arrival there, I found Tpr Owles who had been drinking, in the outer room of the kitchen. I asked him what was the matter and told him to go to bed and I would see him in the morning, to which he replied 'You're not going to be a cunt, are you?' I replied again that I would see him in the morning. He left remarking as he did, 'You're a big bastard'. Later, I went upstairs to see if Tpr Owles had gone to bed and when he saw me coming up the stairs he remarked 'Here comes the big cock-sucker now'. While Tpr Owles was in the kitchen I noticed he had three stripes on each arm. I asked him why and he remarked, 'I had to get a drink somewhere'. The next morning I laid the three charges against Tpr Owles."

The accused declines to cross examine this witness.

The above record is read to the witness. C H Hills.

2ND WITNESS FOR THE PROSECUTION

A55699 Tpr Robert, J.V., B Sqn The 11th Cdn Armd Regt (Ont.R), having been duly sworn states:

"At about 0045 hrs 4 Jun 45 I came downstairs to take care of Tpr Owles, who was not able to take care of himself. Then the Sgt Major appeared on the scene along with the cook. The Sgt Major told me to take him upstairs, which I did. After I got him to his room he became violently ill and passed out."

The accused declines to cross examine this witness.

The above record is read to the witness. J V Robert

3RD WITNESS FOR THE PROSECUTION

E21314 Cpl Paquet, A.R., B Sqn The 11th Cdn Armd Regt (Ont.R), having been duly sworn states:

"At about 0045 hrs 4 Jun 45 I heard somebody in the kitchen. I woke up and I went to see the Sgt Major and asked him to come with me because it was about the second time I had been awakened by noise in the kitchen. When we got there we found Tpr Owles sitting on the floor behind the door, not in the kitchen but in the ante room from which we serve the meals."

The accused declines to cross examine this witness.

The above record is read to the witness. A R Paquet

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.

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

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

(S. Jourard) Lieut
The 11th Cdn Armd Regt (Ont.R)

FIELD/sh

Notice Under R.P. 76

Under R.P. 76 take notice that I intend to adduce further evidence from the Commanding Officer, 11 C.A.R. in the form of the attached document certifying that since B60766 Tpr OWLES, E.A. joined this unit on 1 Jan 45 he has never held the rank of Sergeant.

(S. Jourard) Lieut
The 11th Cdn Armd Regt (Ont.R)

7 July 45

This is to certify that I,
B60766 Pvt. Owles 11 C.A.R.
have received Notice under R.P.76

E. Owles

LIST OF WITNESSES

FOR THE PROSECUTION

B61192	SSM	Hills, C.H.	- The 11th Cdn Armd Regt
A55699	Tpr	Robert, J.V.	- The 11th Cdn Armd Regt
E21314	Cpl	Paquet, A.R.	- The 11th Cdn Armd Regt

FOR THE DEFENCE

NIL

EXHIBITS

NIL

STATEMENT RE DEFENCE

I wish to have an Officer assigned to represent me at my forthcoming trial by F.G.C.M. If he is available I wish Lieut. Brooks 14 C.A.R. to be so assigned.

E. A. Owles

B60766 Tpr Owles, E.A.
The 11th Canadian Armoured Regiment (Ont.R)

89-P

Bob Owen, E.J.

O. H. M. S.

M. F. B. 270

84-P

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 First day of October, 19 42.

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery 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; *[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.

* Omit if not applicable.

*[I am unable to appoint:—

*(1. [illegible].)

*(2. [illegible].)

*(3. [illegible] service.)

for the following reasons, namely:—]

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 REVIEWED

[illegible] Capt
Reviewing officer's signature
17 Oct 42

AB160
1013

President.

Rank.	Name.	Regiment.
Major	J.F. Morlock	5 Cdn Fd Regt, R.C.A.

Members.

Rank.	Name.	Regiment.
Capt.	D.M. Cornett	6 Cdn Fd Regt R C A
A Lieutenant	W.L. LAWSON To be detailed by	4 Cdn Fd Regt R C A
A Lieutenant (waiting member)	G.M. WELCH To be detailed by	4 Cdn Fd Regt R C A

* 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, P.C. Tees
(P.C. ~~Tees~~) 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)
B9060 Bdr. Owen, E.J. ~~26~~ Fd Bty R C A 4 Cdn Fd Regt.	FIRST CHARGE A.A. Sec. 15. (1) 1.W.O.A.S. "Absenting himself without leave, (see charge sheet attached).	guilty	guilty REDUCED TO RANKS 5 Oct '42 J M Morlock Major RCA	Confirmed P C Dees Brig. C.R.A. 2 CON. DIV.

* 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 C Dees (P.C. Tees) Brigadier, Commanding RCA 2 Cdn Div. Convening Officer (c)

(Signed) J M Morlock Major R.C.A 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 5th 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)
were duly sworn.

* Omit if not applicable.

Signed this 5th day of October 1942.

J M Morlock Major RCA
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 6th day of Oct 1942

P C Dees
Confirming Officer ..... Brigadier
C.R.A., 2 CON. DIV.

Promulgated and extracts taken in the case of B9060 Bdr Owen E J

(a) (Dated) 8-10-42 (Signed) John D Harrison Capt
Adjutant 4th Fd. Regt., R.C.A., 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.

[illegible] Wt. 40113—495 200 m 1/42 F. St. G. 800

Squadron / Battery / Company / Detachment

MORNING SICK REPORT

Unit or Battalion

19

Regt'l No.	RANK AND NAMES (Christian Name in full)	Age	Religion	Whether for duty a prisoner or defaulter	Married or Single	DISEASE	Medical Officer's Remarks and Initial

Medical Officer

Orderly N.C.O.

M. F. B. 282
4560M-3-41 (0668-9-90)
H.Q. 1772-39-248

(OVER)

CHARGE SHEET

The accused B9060 Bdr Owen, E.J. of the 14 Cdn Fd Bty, 4 Cdn Fd Regt, R.C.A., a soldier of the Canadian Army (Overseas) is charge with:

FIRST CHARGE

Sec 15(1)
Army Act

W.O.A.S., "Absenting himself without leave", in that he, in the Field did absent himself from 2300 hrs 15 September 1942 until 2030 hrs 22 Sep 1942.

(P.A.S. Todd) Lt.-Col.
Comd 4 Cdn Fd Regt, R.C.A.

26 day Sept 1942

In the Field
To be tried by F.G.C.M.

Brigadier
C.B.A. 2 Cdn Div

Trial of B9060 Bdr. Owen, E.J. 4 Cdn Fd Regt RCA
held in the field 5 Oct 42

President :- Major J.F. Morlock 5 Cdn Fd Regt RCA
Members :- Capt D.M. Cornett, 6 Cdn Fd Regt RCA
Lieut W.L. Lawson, 4 Cdn Fd Regt RCA

Prosecutor :- Capt D.W. Blyth, 4 Cdn Fd Regt RCA

Defending officer :- Capt D.L. Thomson, 4 Cdn Fd Regt. RCA

Accused does not object to President or members

Court sworn

Accused is arraigned ~~"pleads"~~ and the court being satisfied the accused's description is 14 Fd Bty amend the ~~charge sheet~~ convening order accordingly. The accused pleads "guilty" to the charge.

R.P. 35 (3) complied with

Abstract is read.

Accused does not wish to make any statement on the charge but wishes to call character evidence

1st Lieut Character — Lieut J D MacFarlane, 4 Cdn Fd Regt RCA, duly sworn, states :-

Have known accused 7 mos - efficient worker done good job as cook - has done good job at all times & I have never had a complaint against him

No cross-exam.

Defending officer states the Padre is on leave but left a statement as to character - Read & attached to record

Prosecutor, duly sworn, submits AFB 296 & MFM 6 and states relates to accused & are fair extracts from Regtl books as compared by him

No cross exam.

Defending officer in mitigation - Refers to character - act not premeditated - during leave received confirmation of home upheaval & just went to pieces for a week but pulled himself together & reported back

Certified a true record
of this trial 5 Oct 42

J D Morlock Major RCA
President

CHARGE SHEET

The accused B9060 Bdr Owen, E.J. of the 14 Cdn Fd Bty, 4 Cdn Fd Regt, R.C.A., a soldier of the Canadian Army (Overseas) is charge with:

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(P.A.S. Todd) Lt.-Col.
Comd 4 Cdn Fd Regt, R.C.A.

26 day Sept 1942

In the Field
To be tried by F.G.C.M.

Brigadier
C.R.A. 2 Cdn Div

I, B9060 Bdr Owen, E.J., 14 Fd Bty, 4 Cdn Fd Regt, R.C.A. desire to have an officer assigned to represent me at my trial by court-martial.

Capt D. A. Thomson
.....

I desire the services of
if he is available

E. J. Owen Bdr.
.....

Dated in the Field
this 27 day of September
1942.

Trial of B7060 Bdr. Owen, E.J. 4 Cdn Fd Regt RCA
held in the field 5 Oct 42

President :- Major J.F. Morlock 5 Cdn Fd Regt RCA
Members :- Capt D.M. Cornett, 6 Cdn Fd Regt RCA
Lieut ~~R~~ W.L. Lawson, 4 Cdn Fd Regt RCA

Prosecutor :- Capt D.W. Blyth, 4 Cdn Fd Regt RCA

Defending officer :- Capt D.L. Thomas, 4 Cdn Fd Regt RCA

Accused does not object to President or members
Court sworn

accused is arraigned ~~+ pleads~~ and the court
being satisfied the accused's description is 14 Fd Bty
amend the ~~charge sheet~~ correct accordingly. The accused
pleads "guilty" to the charge.

R.P 35 (3) complied with

Abstract is read.

Accused does not wish to make any statement on
the charge but wishes to call character evidence

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against him

No cross-exam.

Defending officer states the Padre is on leave but left
a statement as to character - Read + attached to
record

Prosecutor, duly sworn, submits AFB 296 + MFM 6
and states relates to accused + are fair extracts
from Regtl books as compared by him.

No cross exam.

Defending officer in mitigation - Refers to character -
act not premeditated - during leave received
confirmation of home upheaval + just went to
pieces for a week but pulled himself together
+ reported back

Certified a true record
of this trial 6 Oct 42

J F Morlock Major RCA
President

Abstract of evidence in the case of B9060 Bdr Owen E.J. taken this 24th day of September by Capt John D'Harrison pursuant to order of Lt Col P A S Todd.

First Witness C18635 L/Sgt Laney W.J. having been duly sworn stated.

He is a L/Sgt in the 14th Bty 4th Fd Regt and was orderly sergeant on the night of Sept 15.9.42. B9060 Bdr Owen E.J. is a Bdr in the 14th Bty and had been on seven days leave due back to the Bty at 2300 hrs 15/9/42. Bdr Owen was reported absent at 2300 hrs 15.9.42 and he reported him absent on the absentee report on the morning of 16.9.42.

Second witness C18676 L/Bdr Newman F having been duly sworn stated.

He is a L/Bdr in "C" Troop 14th Bty 4th Fd Regt and was orderly NCO on the night of Sept 15th. B9060 Bdr Owen E.J. was due back from leave at 2300 hrs 15.9.42 but he did not report in and was not in barracks at 2300 hrs 15.9.42. Bdr Owen was absent from 2300 hrs 15.9.42 ~~during his tour of duty and he did not see Bdr Owen until 23.9.42 and~~ until 23 Sept 42. ~~L/Bdr~~ He was Tp orderly NCO until 20.9.42 and Bdr Owen was absent without leave throughout his tour of duty ~~and~~

Third Witness C19580 Bdr Ostapyk N having been duly sworn stated.

He is in the 14th Bty 4th Fd Regt and was Guard Cmdr the night of Sept 22/42. Bdr Owen reported in to him and turned in his pass (marked as Exhibit "A"). Bdr Owen stated he was 6 days and about 20 hours late and he reported him to the Orderly Sergeant.

B9060 ~~Bdr~~ Owen having been duly warned declined to make a statement

John D'Harrison Capt

To Whom it may Concern:

B9060 Bdr Owen, E.J. has been known to the writer for nearly three years, first in the 53rd Battery in 1939, then later as a member of the 4th Cdn Fd Regt. I have found him to be a man of reliable habits, steady, and a good worker. Unfortunately there has come into his domestic life back home, difficulties that have caused him great mental distress, and emotional upset. These we are not at liberty to reveal, he will not permit me to tell the Court, but I do know they are such as to cause a man to lose faith, and as this is the basis of morale, the consequence, feeling of "what's the use". This domestic upheaval, I might say we now have in hand and hope to be able to secure for him a successful conclusion, in order that he might become again mentally adjusted, and his morale again that of a good soldier.

(May McCleary) H/Capt.
Chaplain

Witness:

.....Capt.

EXHIBIT "A"

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

Retained 2030 hrs 22-9-42 N. Ost 44 Cdn Fd Regt RCA

No. ..... Army Form B25 (In pads of 100)

PASS

No. B9060 (Rank) Bdr (Name) Owen E.J.

has permission to be absent from his quarters/duty, from

C73 8/9 to 1300 15/9/42

for the purpose of proceeding to Birmingham

(Station) Bdr

(Date) 4/9/42

J.D. Max Farlane Lieut for Commanding

[P.T.O.

* Destination not required unless absence is to exceed 24 hours. Unless notification is desirable owing to local conditions or is necessary to enable purchase of rail tickets at reduced fare.

† Delay whichever is not practicable.

Exhibit A to evidence of bdr Ostapyk

CROWN COPYRIGHT RESERVED

44th FIELD BATTERY R.C.A. C.A.S.F. 9 SEP 1942 HOURS BATTERY OFFICE

A Soldier on pass who requires medical aid must apply for it, personally if possible to the nearest Military, R. Naval or R. Air Force hospital or other Medical formation, showing this pass. If, however, he resides more than two miles from such hospital, etc., he may apply to a civilian doctor, to whom he will show this pass, and the doctor will then be allowed the following rates for medical attendance on the soldier at the latter's residence.

VISIT AND MEDICINE	If not more than 2 miles away	[illegible]
Day	4s. 6d.	An additional [illegible] for each [illegible]
Night 22:00 to 07:00 hrs.	6s. 0d.	a mile [illegible]

When the soldier visits the surgery of a civilian doctor [illegible] such visits will be —3s. per visit.

The Soldier will at once report the employment of [illegible] addressed to his Commanding Officer to whom the civilian [illegible] on Army Form O. 1687 for payment.

If hospital treatment is necessary, the soldier will at once report the [illegible] to the nearest Military, R. Naval or R. Air Force hospital [illegible] or Medical Inspection Room for Troops, and failing that [illegible] when arrangements will be made, wherever possible, for any [illegible] to be given from military sources. If a soldier is admitted to a R. Naval or R. Air Force hospital, he will report the fact immediately to his Commanding Officer. If, in the event of emergency, a soldier is admitted to a civil hospital, he will report the fact immediately to his Commanding Officer, who will at once notify the Assistant Director of Medical Services concerned.

When a soldier on pass is prevented by sickness, which must be properly certified, or by other unavoidable causes, from rejoining his Corps by the date on which his pass expires, he is to report himself before that date—

To the nearest General or other Officer on the staff of the Army or to the Commanding Officer of any unit or detachment of the Regular Army; or if none of these be within convenient distance to a Justice of the Peace.

If in Eire, he is to furnish the medical certificate to his C.O.

A Soldier on leave or furlough who requires emergency dental treatment must apply for it to the nearest military, Royal Naval or Royal Air Force Hospital or Dental Centre.

If he resides more than two miles from such hospital or dental centre, he may apply to a civilian dental practitioner to whom he will show this pass; the dental practitioner will be paid only for strictly emergency treatment and at the rates admissible under the National Health Insurance Act (Dental Benefit Regulations).

The soldier will at once report the employment of the civilian dental practitioner to his Commanding Officer, and the practitioner will submit his claim for payment on Army Form O 1687 and forward it to the Deputy Director of Medical Services at the headquarters of the Command in which the soldier is temporarily residing.

These instructions, where applicable, will also be held to refer to a member further than an officer of the Auxiliary Territorial Service or of a Voluntary Aid Detachment called out for service.

If his pass exceeds 24 hours a soldier is to leave his address with the Captain of his company, and he must at all times be prepared to rejoin on the shortest notice, if ordered to do so.

NOTE.—The above instructions are not applicable to a soldier on Field Service overseas.

RAILWAY TRANSPORT OFFICE
NEW STREET
STATION
L.M.S.
BIRMINGHAM

(Substitute for AFB 296)
or MFB 355

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED

No. B9060 NAME Bdr Owen, E.J. UNIT 14 Fd Bty, 4 Cdn Fd Regt RCA

AGE 29 MARRIED OR SINGLE Married NO. OF DEPENDENTS Nil

DATE OF ATTESTATION 7 Sep 39

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

a/Bdr. 10 Sep 41

Confirmed Bdr. 1 Feb 42

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

D.W. Hyde Capt.
(Officer i/c Records)
4th Canadian Fd. Regiment RCA. UNIT

Dated at
this 5th day of October 1942.
(To be dated and signed as of date of trial)

No. B9060 Name Owen, E.J. Sqn., Battery, or Company 53rd Field Corps R.C.A. CASF Date of enlistment 7-9-39 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. McG.Young Character Very Good

M.F.M. 6

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
Petawawa	16-6-40	Gnr		Sec 15(1) A.A. "AWL" from 0800 hrs 16-6-40 to 2030 hrs 27-6-40	BSM Gunn	14 days C.B.	2-7-40	(F.P. Lloyd) Lt.-Col	12 days forfeiture of pay
Petawawa	5-8-40	Gnr		Sec 15(1) A.A. "AWL" from 1400 hrs 5-8-40 to 2315 hrs 7-8-40	Sgt Bradley TBSM Addie	5 dys C.B. 4 days Fine	8-8-40	(W.E.Harris) Major	3 days forfeitue of pay
Bordon, Hants	8-7-42	Bdr		WOAS was improperly dressed - not carrying a respirator A.A. Sec 11	L/Bdr Vallier, JR Gnr Lundgren, TA	Reprimanded	3 Aug 42	(FAS Todd) Lt.-Col.	

CERTIFIED TRUE COPY

(P.T.O.)

REVIEW SHEET

F.G.C.M. - Trial: B-9060 Bdr OWEN, E. J., 14 Fd Bty RCA 4 Cdn Fd Regt

Date of trial: 5 Oct 42

" President of Court: Maj J F Morlock, 5 Cdn Fd Regt RCA

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

(a) Convening order is not signed by the President of the Court. (see M.L p. 742).

(b) Medical certificate is not in the "approved" form. Specimen certificate is attached hereto.

(c) Charge is not dated by the Confirming Officer. (M.L 704)

(d) Proceedings indicate that officers under instruction were sworn but the transcript does not show who these were.

(e) Exhibits are not signed by the President (See "The Green Book" p. 24, para 63).

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

C. C. 14 Fd Bty RCA, 4 Cdn Fd Regt

Adjutant do

President of the Court

A.D.J.A. 2 Cdn Div

Staff Officer for Convening Officer

Staff Officer for Confirming Officer

(A.W. Embury) Major,
D.J.A., 1 Cdn Corps.

DISTRIBUTION:

C.M.H.Q.

2 Cdn Div

File

4F-135

Tpr (A/Sgt) Oxley R C

RECORDED AT CMHQ IN AB 160 4F-135

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3) 40/P & S/1698 (6144) 4/38B

RECEIVED - 1 DEC 1944 JAG BRANCH CMHQ

Convened by Order of Brig T J Rutherford, ED Comd "E" Gp CRU dated 3 Nov 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.
C-70659	Tpr	(Wgt)	Robert Charles	OXLEY	1 CACRU

PROCEEDINGS REVIEWED 2 Dec 44

JAC

REVIEWING OFFICER, CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) England on (*date(s)*) 6 Nov 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(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.(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 10.40 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 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 (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 Miller ED KC	HQ CRU
Member	Capt	J W Stratton	1 CA S CRU
Member	Lieut	F J Spicoluk	1 C S RU
~~Judge-Advocate~~			
Prosecutor	Lieut	N S Wadhams	1 CA CRU
Defending Offr	Lieut	M. Coughlin	1 CA CRU

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 D1 p 3.)

A8. The accused C 70659 Tpr (A/Sgt) Robert Charles Oxley before arraignment make(s) (no) (a) plea objecting to each charge note attached (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.....

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 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.

SCHEDULE.

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

Accused: C-70659 Tpr (A/Sjt) Robert Charles OXLEY, 1 CACRU

	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 40	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 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 forfeit all ordinary pay for fourteen (14) days.

(Sgd) ..... Judge-Advocate, if any. 8 Nov 44 Date awarded. (Sgd) ..... 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(2). 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:

~~Not confirmed.~~ Finding and sentence confirmed.

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

(Sgd) J Rutherford Brig

Date 21 Nov 44 Commanding 5 Gp Sub Sec Confirming Officer.

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

Accused.	Date.	Signature of Offr.
C 70659 Tpr (A/Sgt) Oxley RC	23 Nov 44	F.T. Stevenson Lt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 1 DEC 1944 CMHQ

RECORDED AT CMHQ IN ...

CFA56 (In lieu of AFA51 & B./1698 (6144))

FIELD GENERAL COURT-MARTIAL 4/38B

Convening Order of Brig T J Rutherford Comd "E" Gp, CRU dated 7 Nov 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-70659	Tpr	A/Sjt	Robert Charles	OXLEY	1 CACRU

PROCEEDINGS REVIEWED / Dec 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 8 Nov 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 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 1445 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 Lt Stenographer 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	G.H. Andrew, E.D.	4 CACRU
Member	Capt.	R.H. Pitcairn	1 CACRU
Member	Lieut	J. Jennings	1 CACRU
Judge-Advocate			
Prosecutor	Lieut	N.A. Watkins	1 CACRU
Defending Offr	Lieut	M. Coughlin	1 CACRU

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 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 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, 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 .(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 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 is disallowed on the 1st charge(s), and allowed on the 2nd 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. Neither. 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)

(1. *AA 54(2) (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. Witness as to character only.

(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 C 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. Say Nothing.(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 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.C-70659 Tpr. (A/Sgt) Robert, Charles OXLEY, a soldier of the Canadian Army Overseas, on the strength of No.1. Canadian Armoured Corps, Reinforcement Unit, is charged with,

1st 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 at about 2300 hours on the 21st day of Oct 44 did improperly use Cdn Govt Veh No.CZ-4205226 for private purposes, ~~thereby occasioning the death of A-21141 Tpr BENNETT, G and D-131637 Tpr. GRYDERHAM, WS, both of No.1. Cdn Armd Corps, Reinf Unit.~~

2nd 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 at about 2300 hours the 21st day of Oct 44, failed to remain at the place of an accident, contrary to MT Drivers' Regs C.A.O. page 21, para 27, after he had been involved in an accident in front of the Car Park on Commercial Road, Woking, Surrey.

A.T. PATERSON, Colonel,
Commanding Officer,
No.1. Cdn. Arm'd. Corps,
Reinforcement Unit.

In the Field,
27th Oct 44.

To be tried by RGCM in the Field.

(T J RUTHERFURD) Brig
Comd
"E" GP CAU

In the Field.
3 Nov 44

CHARGE SHEET

The accused, No.C-70699 Tpr. (A/Sgt) Robert, Charles OXLEY, a soldier of the Canadian Army Overseas, on the strength of No.1. Canadian Armoured Corps, Reinforcement Unit, is charged with,

1st 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 at about 2300 hours on the 21st day of Oct 44 did improperly use Cdn Govt Veh No.[illegible] for private purposes, thereby occasioning the death of [illegible], both of No.1. Cdn Armd Corps, Reinf Unit.

2nd 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 at about 2300 hours the 21st day of Oct 44, failed to remain at the place of an accident, contrary to MT Drivers' Regs C.A.O. page 21, para 27, after he had been involved in an accident in front of the Car Park on Commercial Road, Woking, Surrey.

A.T. PATERSON, Colonel,
Commanding Officer,
No.1. Cdn. Arm'd. Corps,
Reinforcement Unit.

In the Field,
27th Oct 44.

To be tried by FGCM in the Field.

(T J RUTHERFORD) Brig
Comd
"E" GP CRU

In the Field.
3 Nov 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.
C-70659	Tpr	(A/Sjt)	Robert Charles	OXLEY	1 CAC RU

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*) 3 Nov 44 endorsed by me, ~~(or by an offr of my staff for me)~~ "To be tried by Field General Court-Martial". TJR

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.) TJR

(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. TJR

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.~~ TJR

(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.~~ TJR

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

PRESIDENT.

Maj	E.M. MILLER, ED	HQ CRU
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Capt	To be detailed by OC 1 CASCRU	1 CASCRU
Lt	To be detailed by OC 1 CSRU	1 CSRU
(Rank.)	(Named or detailed. RP 106.)	(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	(T J RUTHERFORD)	Brig
(Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)

Date 3 Nov 44 Commanding "E" Gp, CRU
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

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

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.
C-70659	Tpr	A/Sjt	Robert Charles	OXLEY	1 CACRU

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*) 3 Nov 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 (or 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	E M Miller, ED	Hq CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by OC 1 CGRU	1 CGRU
Lt	to be detailed by OC 1 CGRU	1 CGRU

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.)

Date 7 NOV 44

(Signed personally. RP 105 fn 2.) Brigadier (Rank.)

(T J RUTHERFORD) Brigadier

Commanding "E" GP, CRU

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA85 (In lieu of AFA8) 40/P & S/1697 (4031)

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

MEDICAL OFFICER'S CERTIFICATE

R.R. (C.M.) PARA 557

I certify that I have this morning examined

No. C 70659 Sgt. Oxley, R.C.

of No. 1 CACRH and in my opinion he

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

Station M/R #1 CERH

Date 6 Nov 42

J. B. Crawe Capt.
Medical Officer.

MEDICAL OFFICER'S CERTIFICATE
K.R.(Can.) Para. 557

I certify that I have this morning examined No. C 70659.

Name Oxley R.C. of #1 CACRU and in my opinion he is fit/~~unfit~~ to undergo trial by Court-Martial.

Station #1 CACRU

Date 8 Nov. 44

J.K. Johnston Capt.
Medical Officer.

FGCM

Objections to Charges. C706759 A/Sgt OXLEY. R.C.

1st Charge

I submit that the words set forth in the particulars of the charge namely "thereby occasioning the death of A-21141 Pte. Bennett. S. and D-131637 Pte Cryderman W.J., both of No. 1. Cdn. Armd Corps. Reinf. Unit" should be struck out on the following grounds.

(1) It is a definite and unjustified attempt on the part of the prosecution to prejudice the Court against the accused

(2) It has the effect of stating two offences in the one charge which is contrary to R.P. 13 (a) which states "Each charge should state one offence only. -"
Here the offence stated is "Conduct to the prejudice of good order and military discipline" and as stated in the particulars, the act constituting the offence is "did improperly use Cdn Govt Veh. No. C2-420226 for private purposes." But with the addition of the words "thereby occasioning the death etc" it implies that the vehicle was used or driven in a negligent manner and this constitutes the offence of neglect
The result is that the accused is being charged with conduct to the prejudice and also neglect to the prejudice, two seperate offences. This is contrary to R.P. 13(A) which allows only one offence for each charge.
I submit therefore that the words "thereby occasioning the death etc" should be struck out of this charge as laid. If the prosecution wishes to allege these particulars a new charge must be made stating the offence of neglect.

Nov

(3) The statement "thereby occasioning the death etc" in the particulars of this offence is a misuse of the provisions of R.P. 13(f). This rule states "The particulars should state such circumstances respecting the alleged offence as will enable the accused to know every act, neglect, or omission which it is intended to be proved against him as constituting the offence."

In this charge the offence is conduct to the prejudice and the particulars state that the circumstances namely "at about 2300 hrs she did improperly use Can Govt Veh No. CZ. 4205-226 for private purposes." These words are ample to enable the accused to know the act which constitutes the offence. The addition of the words "thereby occasioning etc" only confuse the accused. They can only be particulars with regard to this charge if the prosecution intends to prove that the accused had for a private purpose the intention of killing these two soldiers. I submit that the prosecution does not intend to prove that, particularly since the accused was absolved from blame with regard to the deaths by the Civil authorities.

(4) The only remaining ground which might substantiate these words being used in the particulars is the provision of R.P. 13(f). which states "Where it is intended to prove any facts in respect of which any deduction from ordinary pay can be awarded as a consequence of the offence charged, the particulars should state those facts." Such deductions are governed by S 137 and 138 A.A. 91 it is apparent that these provisions do not apply and the prosecution is not relying upon them.

RM

(5) The similarity of circumstances in civil practice is helpful in showing that these words should not appear in the charge. Where a driver is operating a vehicle in civil life without a driving license and is involved in a collision, the fact that he has no license does not make him responsible for damages. It must be proved that he was driving negligently before he can be held responsible for damages, and unless it is proved he was driving negligently, the only offence he has committed is that of driving without a licence contrary to statute. I submit therefore that military law is the same in this regard.

(6) Lastly, I submit that these words work a hardship on the accused. If he is found guilty of the charge as it is at present worded, the fact that he occasioned the death of two soldiers will appear on his records and will follow him on his entire career. We who are present today at the trial know that he has been absolved from blame by the civil authorities with regard to the death of these two soldiers. But if he is found guilty and these words are placed on his conduct sheet, then others at a later time will read those words and not having the knowlege of his innocence as we have today, will naturally conclude that he is guilty of murder or manslaughter. Such an event would definitely be an injustice to the accused.

W. B. Coughlin Lieut.
Defending Officer

CASE OF

C.70659 Pte (A/Sjt) OXLEY RC 1 CAGNU

PROSECUTION

FIRST WITNESS

F.A. WEBSTER, Detective, CID, Surrey Joint Police, WOKING, having been duly sworn, states:

I am a Detective Constable in the Surrey Joint Police at Woking. As a result of certain infm I recd about an accident I made inquiries at Inkerman Bks on Sun the 22nd, Monday the 23rd and Tues the 24th Oct with a view to tracing a dvr and I interviewed numerous people and at 4.15 pm on 24 Oct I interviewed the accused whom I now recognise, and I told him I was a police offr from Woking and that I was inquiring into an accident which had occurred in Commercial Rd, Woking on the evening of 21 Oct. I said "I have reason to believe that you were the dvr of that veh which had been reported to the police as stolen from Inkerman Brks". The accused said "You are right, I will make a full confession, the whole thing has been worrying me and I want to get it off my chest". I thereupon cautioned him. I told him he was not obliged to say anything unless he wished to do so, but that whatever he did say would be taken down in writing and may be used in evidence. He then made a statement which I took down in writing, which I read over to him and which he signed.

PRES TO DO: Have you anything to say on this before I admit it?

DEF OFFR TO WITNESS:

Q. Who was present when you put this caution to accused?
A. Insp Elkins of the Civil Police and Maj Stewart of 1 CAGNU.

Q. Were you aware at that time that Maj Stewart was the CO the Bn the accused was serving in at that time?
A. I would not be certain.

Q. You know now that he is?
A. Yes.

Q. Did you know then that he was his superior offr?
A. I think I did, but I wouldn't be certain.

Q. You did not ask him first of all before cautioning him if he wished to make a statement?
A. No, at the interview he said he wished to make the statement.

QUESTIONS BY THE COURT:

Q. Where was this interview?
A. At the office of "D" Sqn, 1 CAGNU, the Section HQ where the accused is employed.

Q. Was he there or was he sent for?
A. Sent for he was, Sir, and I was there when he came in. He came in with a Sgt-Maj who called him at my request.

Q. Where was Maj Stewart?
A. He wasn't there when the accused came in, but I think the accused asked for him to be present when he came in.

Q. Maj Stewart was there when this statement was taken?
A. Yes, and it was read over to the accused in the presence of Maj Stewart, and Maj Stewart was there when the accused signed it.

(AT THIS POINT THE WITNESS WAS ASKED BY THE COURT TO RETIRE)

OBJECTION BY THE DEF OFFR ON THE ADMISSIBILITY OF THIS STATEMENT

Sir, this statement was made in the presence of the accused's CO, and although a warning was given by the police officer who was taking the evidence and on his testimony before the accused's superior offr came into the room I feel that there may be a possibility of influence being brought to bear on the accused in making this statement. Besides, the police offr's warning does not follow the suggested warning as given on Page 92 MML, sub para 8, in that it is lacking in the words "do you wish to say anything in answer to the charge?". These are my objections Sir, and I submit that this statement should not appear in the evidence.

REPLY BY THE PROSECUTOR

The only point I would bring up in reply to this objection by the Def Offr is that Messenger was not charging the accused directly at that time and also that any statements he made to him were made with regard to the civil law and would not necessarily conform to the Army Act.

DEF OFFR

I think the same rules apply to civil practice and as a matter of fact the Army has adopted the wording of the civil authorities in that regard. It is they that recommend that these words be given in giving the cuation.

THE COURT IS CLOSED TO CONSIDER THE OBJECTION.

THE COURT IS REOPENED AND THE PRESIDENT ANNOUNCES THE STATEMENT WILL BE ADMITTED SUBJECT TO THE OBJECTIONS OF THE DEF OFFR.

F.A. MESSENGER, Detective, CID, Surrey Joint Police, WOKING, recalled, and is examined by the Prosecutor:

Q. Did the accused read over the statement?
A. After writing it out I read it over to him in the presence of Maj Stewart and asked him to make any corrections he wished to make. He did not make any corrections except as to the spelling of a name on page 3, which was initialled, and he then signed each sheet.
I now produce this statement in evidence. May it be returned to me as it is required for our files.

ORIGINAL STATEMENT PRODUCED BY THIS WITNESS IS MARKED EXHIBIT "A" AND RETURNED TO HIM AT HIS REQUEST. A COPY AFTER CONSIDERABLE DELAY RETAINED BY THE COURT AS A RECORD AND MARKED EXHIBIT "A" (see RR CAJ 860).

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH R.69(2)

SECOND WITNESS

Maj D.F. STEWART, OC "D" Sqn, 1 CACRU, having been duly sworn, states:

I am the offr IC of "D" Sqn 1 CACRU, and in regard to vehicle QZ 4205226 I did not authorize the use of that veh by anyone after 1700 hrs on the 21 Oct 44. During normal trg hours the only persons who can authorize the use of that veh are myself, Capt Whewell my 2 IC, and for normal trg purposes, the accused. A work ticket is made out for the day and signed by an offr permitting its use throughout the day, the actual trips being designated by any of the three I have mentioned. The work ticket has just one entry for the day.

Q. On the day in question to what hour were trips authorized by the ticket as signed?
A. Until 1700 hrs.

Q. What is the procedure on trips after that hour?
A. If the veh is to go out on any trip that I consider necessary I personally instruct the dvr that the trip is authorized, or in my absence, Capt Whewell.

Q. Did you authorize the accused to use the veh on the evening of 21 Oct 44.
A. No.

Q. Have you a copy of MT Regs with you?
A. I have.

Q. Would you tell the Court whether the accused is familiar with these regs or not?
A. I'm not aware whether he is or not.

Q. Would you say that he should be familiar with them?
A. Yes.

DEF CVFR: The witness has already said he is not aware of whether he is or not.

Q. How is the accused employed?
A. IC of despatching and veh administration in my Sqn.

Q. Are MT Regs available in your Sqn?
A. No, they are not. They've been on indent for 18 mths and have not been recd.

Q. Would you read to the Court MT Regs?

(OBJECTION BY THE DEF OFFR IS SUSTAINED)

Q. Have you the work ticket for the veh in question?
A. Yes, here is the work ticket made out for the veh in question in this case and it is made out for the 21 Oct and signed by Capt Whewell which would authorize its use for normal trg purposes for that day.

QUESTIONS BY THE COURT:

Q. Where did you obtain this ticket from?
A. It was found on the 22 Oct in the morning in the office where the Log Books are kept, with the Log Book.

WORK TICKET OFFERED AND RECD IN EVIDENCE AND MARKED EXHIBIT "B"

CROSS-EXAMINED

Q. That (B+B) would authorize trips for trg purposes until the end of that day?
A. Normally the dvr of that veh completes the mileage in the book at the end of the day, at 1700 hrs.

Q. But he would still use this work ticket till 8359?
A. Yes, if there was still trg.

RE-EXAMINED

Q. Have you ever told the accused that in the event of an accident it is the duty of the dvr to remain with the veh?
A. I can't ever remember the occasion coming up of instructing him on that point, I've always taken for granted that he knew it.

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

THIRD WITNESS

Capt EF Whewell, 1 CACRU, having been duly sworn, states:

DEF OFFR: This witness has not been called at the Summary and I would like to know the nature of his evidence.

PROSECUTOR: He is being called in respect of the Work Ticket and also the type of work done in the office.

Q. How are you employed?
A. I am 2 IC of "D" Sqn 1 CACRU.

Q. Can you identify Exhibit "B"?
A. Yes, this work ticket is used for authority for using the veh named on it for Sqn Tpt duties. The truck that day was used for transporting personnel from 1 CACRU to the LAD and was also used for hauling petrol.

Q. Until what hour that day does this ticket authorize journeys?

A. It covers journeys that are required by the Sgt almost any time during the day.

Q. Who in "D" Sqn can authorise journeys?
A. Myself, Maj Stewart and the Tpt Sjt, Sjt Oxley.

Q. Did he ask for permission to use that veh on the night of the 31st?
A. Not that evening.

Q. Was there an authorised trip made on the evening of the 31st?
A. I don't know of any trip that evening.

Q. Is your signature on Exhibit "B"?
A. Yes.

NO CROSS-EXAMINATION.

QUESTIONS BY COURT:

Q. Were you out of camp on the evening in question?
A. I was.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(3)

FOURTH WITNESS

Lt M.L. VINE, 1 CACNU, having been duly sworn, states:

I'm at present undergoing tng at 1 CACNU and on the evening of 31 Oct 84 I was the offr IC of the Woking Patrol, and as such I was stationed in the Woking Police Stn. On that evening I found a veh which appeared to have been involved in an accident. It was a 15 cwt of 1 CACNU, the number I don't remember. When I arrived at the scene of the accident at approx 2310 hrs there was not a dvr to this veh to my knowledge. I made thorough inquiries - also, there was ndone in the veh.

CROSS-EXAMINED

Q. You recd a call while at the Police Stn, and how long did it take you from the Police Stn to the scene of the accident?
A. Approx 5 mins. I took the 2 remaining piquet from the Police Stn with me. An ambulance arrived 5 mins after I arrived.

Q. It was not until after the departure of the ambulance that you started making inquiries?
A. Yes.

Q. Did you ask Sjt Oxley if he was the dvr of the veh?
A. No.

QUESTIONS BY THE COURT:

Q. Was Sjt Oxley there?
A. I don't know, I didn't know him at that time.

Q. How did you inquire for the dvr?
A. The police were there at the time and I seen them taking down infm and I asked them if they had recd the dvr's name and they gave me a negative answer, so I proceeded to ask other around. I asked 3-4 that were there if they had seen the dvr and they

all gave me a negative answer.

PROSECUTOR TO PRESIDENT OF THE COURT: May I ask a further question?

PRESIDENT: Yes.

Q. In your trg as an armd corps offr what were you instructed to do in the case of an accident?

(OBJECTION BY THE DEF OFFR TO THIS QUESTION IS SUSTAINED)

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

FIFTH WITNESS

D.77299 Cpl DAVIDSON, D, of 1 CACRU, having been duly sworn, states:

I recognize the accused. On the evening of 21 Oct I was detailed as NCO IC of the Woking Patrol and was on duty there the whole evening. At approx 2300 hrs I saw a veh which was apparently involved in an accident. I don't know the number of the veh but the two vehs belonged to 1 CACRU and were a 60 cwt and a 15 cwt and I was there when the accident occurrred. I was standing almost at the rear on the offside of the 60 cwt and I saw an oncoming car strike the side of the 60 cwt. I don't know the dvr of the 15 cwt but after the collision I made inquiries about the driver of the veh and I couldn't find any dvr. We looked in the truck first and then we looked around.

NO CROSS-EXAMINATION

QUESTIONS BY THE COURT:

Q. Some people were hurt in this collision?
A. Yes.

Q. And you assisted in looking after them?
A. Yes.

Q. When did you start looking for the dvr?
A. After I looked after the people that were hurt before the ambulance arrived.

Q. Know the accused?
A. Yes.

Q. See him there the night of the accident?
A. No.

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

SIXTH WITNESS

H.17700 Tpr BALCUINAS, M, 1 CACRU, having been duly sworn, states:

On 21 Oct 44 I was the dvr of a 60 cwt veh and at approx 2300 hrs I was in front of the Car Pk on Commercial Rd in Woking. I was stopped on the rd fixing the tail gate of my truck when somebody said "look out" and I saw the lights of an oncoming car were almost

on top of me so I jumped towards the sidewalk and it hit the rear of my truck.

Q. As a dvr what are your instructions on being involved in an accident?
A. Make out an accident report with the dvr of the other veh.

Q. Did you at that time?
A. I couldn't find the other dvr.

Q. Make inquiries of him?
A. Yes, I was calling for him when the Police were there looking for him.

Q. Know the accused?
A. I did not know him until since the accident.

Q. See him at the scene of the accident?
A. No.

CROSS-EXAMINED

Q. This was a dark night?
A. Yes.

Q. And there were lots of people around the 2 trucks immediately after the accident?
A. Yes.

Q. Did you have an accident report?
A. The rd accident report was with the Log Book in my pocket.

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

THE PROSECUTION IS CROSSED

SUBMISSION BY THE DEF OFFR
(~~[illegible]~~)

Written out by Dfg offr. read and filed with the Court.

The following was taken down by the court reporter in addition to the Def Offr's submission which is att:

The dvr's regs upon which this charge is based has not been put in evidence and there is no evidence to show that the regs were brought to the attention of the accused or that he was in a position to be acquainted with its contents. Since it is alleged it is a breach of the regs it should be brought under Sec 11. With regard to the first charge I submit that the evidence produced before the Court is not sufficient. There was given in evidence the fact that the accused himself could authorize trips by this particular veh, the work ticket was signed by an offr and that work ticket was good until 2359 hrs, until after this accident occurred. There has been no evidence produced by the Prosecution that this trip could not have been a trip for trg purposes. I submit therefore

that there is not sufficient evidence to require the accused to present his defence.

REPLY TO THE SUBMISSION BY THE PROSECUTION

On the accused's own admission in the statement he did take this veh without authority and that he did take it without permission also. He also admits that he did not remain at the scene of the accident. I think the Court will agree with me that the posn of the accused in a DCP Sine office he must be thoroughly familiar with the procedure done at the scene of an accident. I think the Prosecution has definitely proved both charges against the accused.

THE COURT IS CLOSED TO CONSIDER THE SUBMISSION

THE COURT IS REASSEMBLED.

- D E F E N C E -

DEF OFFR: In view of the Court's finding I only propose to call character witnesses on the accused's behalf.

PRESIDENT TO DEF OFFR: Will the accused make any further statement?

DEF OFFR: No, Sir, he won't make any further statement.

CHARACTER WITNESS

Maj D.I. STEWART, OC "D" Sqn, 1 CACRU, on his former oath, states:

I've known the accused since Mar 43 and during that time the accused has acted in the same capacity, namely despatcher of all trg vehs, and has always done his work extremely well and during that period of some 20 mths he was never at any time to my knowledge taken any privileges on his own or has he taken it upon himself to try and get away with anything in any way. I would like to say that since this accident he has voluntarily performed all his duties since being placed under arrest and at his own request. I am extremely anxious to get him back because he is well trained in his job and it is hard to replace him in his work. He is regarded by other offrs in 1 CACRU here as very popular. He has been employed in tpt work for 1 CACRU since its inception in 1941. He has always been popular with his associates and those working under him.

NO CROSS-EXAMINATION

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

PLEA IN MITIGATION

(NOTE ATT)

Written and read by Def Offr and filed with Court

The following was taken down by the court reporter in addition to what the Def Offr had already said in his written plea in mitigation which was handed to the Court:

The accused has been in close arrest since 21 Oct 44 and during that time as you have heard he has carried on his duties quite willingly and at his own request. He has done this as if he were not under arrest and in view of the fact that he is a specially trained man, and has assisted his Sqn in carrying on during the interval between his arrest and date of trial I ask the Court to consider these facts when passing sentence.

THE COURT IS CLOSED

FGCM A/S PROXLEY

Submissions Re 2nd Charge

I submit that this charge is bad and should be dismissed on the following grounds.

(1) The prosecution has failed to establish in evidence the provisions of M.T. Drivers Regulations upon which the charge is based.

(2) They have failed also to establish in evidence that the provisions of these regulations were brought to the notice of the accused.

(3) Since the charge is one alleging breach of a regulation it is governed by A.A. s.11. and should therefore not be brought under A.A. s 40.

(4) Even if the first two grounds had been established there can still be no conviction for the following reasons: (a) M.T. Drivers Regs. C.A.O. page 2, para 27 states "The driver of a vehicle which is involved in an accident is required by law to stop at the scene of the accident and if asked to do so, to give his name, rank and unit." The act which constitutes the offence as stated in the particulars is "failing to remain at the place of an accident contrary to M.T. Driver's Regs." Looking at the actual wording of the regulation quoted above it can be clearly seen that there is no such offence as "failing to remain at the place of an accident."

(b) The prosecution has failed to establish that the accused did not stop at the scene of the accident and also that he was asked to give his name, rank and unit.

(3) Since "Failing to remain at the place of an accident" is not an offence according to M.T. Drivers Regs., the only alternative for the prosecution is to maintain that it is a civil offence. If so it must be placed under R.A. S 41 and not as presently charged under R.A. S. 40.

Lieut.
Defending Officer.

C-70659 7pr (A/sgt) Robert Charles Ofley. No 1 C.A.C.R.U.

Plea in Mitigation.

Sgt Ofley is now 37 years of age. In civil life he was a chauffeur and garage foreman. He enlisted on 25 Feb 1941 with the 4th P.L.D.G's. and came overseas in June 1941. While with the Regiment he was employed as transport driver. He came to No 1. C.A.C.R.U. in March 1942 and for one year was employed as transport Corporal. He was then transferred to Training wing where he was placed in charge of all training vehicles. He became A/Sgt. in Nov. 1943.

I wish to point out that his army record is outstanding. For the period of nearly four years he has not a record of a crime. During this time he has given valuable service to the Army and has always been employed in responsible positions. He has done a particularly good job at No 1 C.A.C.R.U. and this has meant a lot of hard work on his part, requiring not only his daily work but also being on duty for three nights each week.

Sgt. Ofley was married in Feb. of this year. At the time of this offense he was very much concerned over his wife's condition as she was expecting a child within a few days. This offense was committed with only that thought in mind, and he felt it was his duty to comfort his wife in her ordeal. He felt that the circumstances were in fact an emergency and that in such case his O.C. would have given him permission to use the vehicle for this purpose. Unfortunately at the time

of the offence his C.O. was not available but Sgt. Apley honestly felt that he would rectify this particular journey as soon as he could explain the circumstances. Unfortunately this accident intervened through no fault on his part.

I submit therefore that in view of Sgt Apley's good conduct, his valuable services performed for the army and the extenuating circumstances surrounding the offence, it is a fitting case for the court to show its mercy.

[signature] Lieut
Defending Officer.

EXHIBIT "A"

C.I.D. Woking

4.15p.m. 24th October, 1944.

Robert Charles OXLEY, Sgt. No: C.70659.

"D" Squadron, No: 1 C.A.C.R.U., Inkerman Barracks, St. Johns.

37 yrs. Serving soldier.

I have been cautioned that I am not obliged to say anything unless I wish to do so and that whatever I say will be taken down in writing and may be given in evidence.

(Sgd.) R.C. Oxley.

States:-

I am a sergeant in "D" Squadron of No: 1 C.A.C.R.U., Inkerman Barracks, St. Johns, Woking. I enlisted in the army on the 25/2/41 and have been in England since 30/6/41. I have been driving motor vehicles since 1926. In Canada I was a cab driver for 13 years, and since being in the army I have always been connected with transport and have driven almost every type of army vehicle.

On Saturday, the 21st. October, 1944, I attended a social at the sergeants' mess at Inkerman Barracks, arriving at about 8p.m. I remained in the mess until around 9p.m., during which time I had just two half pint glasses of beer; I never drink a lot of alcohol and very seldomly touch spirits. I certainly didn't have any spirits on Saturday night. After leaving the mess, I went with Sergeant Major HESKETH to the Prince of Wales Public House in St. Johns, where I had just one glass of beer - a half pint. We met Company Sergeant Major LAWSON in the public house and the three of us returned to the sergeants' mess where we had some coffee and sandwiches. I never had any more alcohol at all that night and was, of course, perfectly sober. My two pals - HESKETH and LAWSON - paired up with two ladies in the mess and I was left alone. I should mention that I'm a married man, and my wife is shortly going to give birth to a child. Thus, I was not interested in the women attending the social. When my two pals found their ladies I left the mess and walked over to my office in "D" Squadron; my office is also my sleeping quarters. Nobody was in the office and my thoughts turned to my wife and her coming confinement. She lives at "The Briars", Park Road East, Maybury, and I suddenly felt

Certified True.

(Sgd.) R.C. Oxley.

F.A. Messenger, Detective Cons. 159.

Detective Constable

27/10/44

a strong desire to be with her. I knew that the Duty Truck was standing outside the office and that, had he been available, my Commanding Officer, Major D. P. STEWART, would have given me permission to take the truck to Woking to see my wife, owing to her condition. However, being a Saturday night, he was not around, so I took the truck with a view to telling him at the first available opportunity. I checked the Log Book and Work Ticket to see that everything was in order and drove the truck out of the main gate. When I took the lorry from outside the office, the Car Park Guard was attending to a light some 200 yards away, so I never bothered to tell him about my journey. I then drove to Woking via St. Johns. It was a very black night and slightly misty. I had both sidelights and the one available headlight on. Being a nasty dark night I kept my speed down to 18-20 m.p.h. After passing under Victoria Arch I turned right into Commercial Road with a view to proceeding to my wife's address via Walton Road and Maybury Hill. When I got into Commercial Road near the Atalanta Dance Hall, the road ahead appeared perfectly clear of traffic. It was particularly dark at this spot and I kept well to my nearside. I didn't notice the rear light of any vehicle ahead of me and there was no traffic approaching from the opposite direction. After passing the Atalanta, I suddenly saw an army truck in front of me without a red light showing to the rear. I was only about 6 feet behind the truck when I first saw it. I immediately swung to the right to avoid colliding with the truck and I then saw a figure standing in the road by the rear offside of the stationary truck. I realized that I would be unable to avoid this figure, so I immediately applied my brakes. I was unable to bring my vehicle to a standstill before striking the figure. I switched off my engine and was about to get out of my truck when I heard someone shout out, "Move that truck back, as a chap is jammed." I switched on my motor with a view to reversing when I heard someone else remark, "Don't move your truck," I then got out of my truck, and with the aid of several other soldiers pushed the front of my vehicle away from the rear of the other truck. Being a bit overcome, I then got back into my lorry and sat there for a few minutes. I felt very shaken up and disturbed over the accident and a lot of things passed through my mind, and I was very anxious about my wife. I was particularly worried because I had taken the vehicle without asking permission, and all sorts of horrible thoughts passed through my mind as to what would happen back at the barracks when It was found out that my truck had been involved in an accident. I'm afraid I lost my nerve and cleared off back to the barracks. I had the log book in my pocket when the accident happened.

I got back to the barracks at about 11.30p.m. and went to my room and went to bed. I was very worried and upset and didn't know what to do for the best.

When I got up on the following morning I went straight off to my wife at Woking and remained with her for the rest of the day. I was on week end pass. I stayed Sunday night with my wife and didn't return to the barracks until 7.30a.m. on the Monday morning (23/10/44). I then learnt that the police were trying to trace the driver of my truck because two of our men had been killed. I also heard that my truck had been reported as stolen on Saturday night. I thought about making a clean breast of the whole business, but because of my wife's condition and the fact that I

Corrected 2 nos.
F. Forrester Det Cpl 23/10/44 Constable

Woking

C.I.D. 24th October, 1944.

Robert Charles OXLEY, Sergt. No: C.70659.

didn't want to shock her, I didn't do anything about it. I knew that I should be taking my wife to the doctor on the Tuesday, and it passed through my mind that it would be better to get her settled first before straightening out the matter of the accident. However, the whole thing has been on my conscience all the time. When you interviewed me this afternoon I was only too glad to explain exactly what had happened, I was pleased to get the burden off my chest.

The truck which I was driving on the night of the accident was a 15 cwt. Ford, No: CZ.4205226 and I have driven this same vehicle on numerous occasions during the past 2 years. Consequently, I am very well conversed with it. I am terribly shocked to think that I have been the cause of two of our boys losing their lives. When I took the truck away from the barracks that Saturday night, I never dreamt that such a terrible thing would happen.

This statement has been read over to me by Detective Messenger and is entirely true and correct.

Certified Tout
F A Messenger
Detective Constable
27/10/44

Certified a true copy
[illegible]
Major
Pres.

(Sgd.) R.C. Oxley.

F.A. Messenger, Detective Cons. 159.

Orig returned to F A Messenger
(R R Cen 560)

AFG 3518 (Revised 1942)
40 P&S 400 (4023)

EXHIBIT "B"

TRANSPORT WORK TICKET

No. I — 1.

MAKE OF VEHICLE	CLASS	UNIT	SECTION	DRIVER'S NAME	WD No.	MONTH & YEAR
Ford.	15 C.W.T.	#1 CACRU	I.W.	Spr. Shillolo	CZ 4205926	Oct. 44

DATE (1)		FOR WHOM JOURNEY IS PERFORMED (2)	DETAILS OF LOAD (3)	ROUTE From (4)	ROUTE To (5)	ROUTE Via (6)	SIGNATURE OF PERSON AUTHORIZING JOURNEY (7)	LUBRICATING OILS Type (8)	LUBRICATING OILS Pints (9)	FUEL GALLONS At Start (10)	FUEL GALLONS Drawn (11)	FUEL GALLONS At End (12)	FUEL GALLONS Used (13)	TIME Out (14)	TIME In (15)	SPEEDOMETER In (16)	SPEEDOMETER Run (17)	SPEEDOMETER Day (18)
2-10	A	Dom	Trg Sup	1. CACRU	Area	Return	E.T. Whewell							256	59	257	40	81
3-10	B	D.&M.	Trg Sup	1. CACRU	Area	Return	[illegible]							257	40	258	08	69
4-10	C	D.&M.	Trg Sup	1. CACRU	Area	Return	[illegible]							258	08	259	04	96
5/10	D	Dom	Trg Sup	1. CACRU	Area	Return	[illegible]							259	04	260	16	112
6/10	E	D.&M.	Trg. Sup	1. CACRU	Area	Return	E.T. Whewell							260	16	260	67	51
9/10	F	D.&M.	Trg. Sup.	1. CACRU.	Area	Return	[illegible]							260	67	261	20	53
10/10	G	D.&M	Trg. Sup.	1. CACRU.	Area	Return	E.T. Whewell							261	20	261	70	50
11/10	H	Dom	Trg Sup	1. CACRU	Area	Return	[illegible]							261	70	262	03	33
12/10	I	D&M	Trg. Sup.	1. CACRU	Area	Return	E.T. Whewell							262	03	262	67	64
14/10	K	Dom	Trg Sup	1. CACRU	Area	Return	E.T. Whewell							262	67	263	70	103
16/10	L	Dom	Trg Sup	1. CACRU	Area	Return	[illegible]							263	70	264	39	69
11/10	M	D&M	Trg. Sup.	1. CACRU	Area	Return	[illegible]							264	39	265	28	89

Brought forward from Work Ticket No.

MPG for week or totals carried over.

DATE (1)	FOR WHOM JOURNEY IS PERFORMED (2)	DETAILS OF LOAD (3)	ROUTE From (4)	ROUTE To (5)	ROUTE Via (6)	SIGNATURE OF PERSON AUTHORIZING JOURNEY (7)	LUBRICATING OILS Type (8)	LUBRICATING OILS Pints (9)	FUEL GALLONS At Start (10)	FUEL GALLONS Drawn (11)	FUEL GALLONS At End (12)	FUEL GALLONS Used (13)	TIME Out (14)	TIME In (15)	SPEEDOMETER In (16)	SPEEDOMETER Run (17)	SPEEDOMETER Day (18)
18/10/44	N Dm	Training	1. CACRU	Area	Return	E. F. Whewell Capt							265	28	265	50	32
19/10/44	O D.M.	Training	1. CACRU	Area	Return	E. F. Whewell Capt							265	80	266	52	72
20/10/44	P D.E.M.	Training	1. CACRU	Area	Return	[illegible]							266	52	267	35	83
21/10/44	Q D.E.M.	Training	1. CACRU	Area	Return	E. F. Whewell Capt							267	35			
	R					R											
	S					S											
	T					T											
	U					U											
	V					V											
	W					W											
	X					X											
	Y					Y											

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

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

STATEMENT OF CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number C-70659 RANK..Tpr.(A/Sgt). NAME.OXLEY, R.C. Regt:- 1 C.A.C.R.U.

1. The following is a fair and true Summary of the entries in the FIELD Service ~~and General Regt and Sqn / Battery~~ now CONDUCT SHEETS of the accused.

Within last 12 months		Since enlistment or appointment	
For:-	N/A	For:-	N/A

Number of instances of gallantry or distinguished conduct.....Nil.

The accused has been in confinement awaiting trial on the present charges for..14..days in Mil custody making a total of..14..days in custody of which....0...days were spent in hospital.

The present age of the accused according to his attestation and record of service is.....35 yrs, 3 months.

The service which the accused is allowed to reckon towards discharge is .....3 yrs 9 mos

The accused is in possession of or entitled to CVSM & Clasp

SCHEDULE OF CONVICTIONS BY COURT MARTIAL or Civil Court MSW

NIL

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

Signed this.....8.....day of..Nov 44.....

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.

N S Wadhams Lt.
A/Adjt

Ex S.C.M.
Ex S.C.M.

No. C-70659 Name OXLEY, R.C. Sqn, Battery or Company "D" Sqn Corps 1 CACRU Date of enlistment 25 Feb 41 Badges N/A Service or Proficiency Pay CVSM & Clasp

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 duty N/A 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 given over with Dftl	By whom awarded	Remarks
				PREVIOUS SHEET DESTROYED ON COMPLETION OF 6 MONTHS SERVICE					
"CERTIFIED TRUE COPY"				NO ENTRIES for P.F. KEIRSTEAD, Capt Adjutant, Officer i/c Regtl Books No.1. C.A.C.R.U.					
.....Nov 41									

(PTO)

SUMMARY OF EVIDENCE

Summary of Evidence in the case of C-70659, Tpr. (A/Sgt.) Robert Charles OXLEY, a soldier of the Canadian Army Overseas, on the strength of No. 1 Canadian Armoured Corps Reinforcement Unit.

THE COMMANDING OFFICER DIRECTS THAT ALL EVIDENCE BE TAKEN ON OATH.

1st Witness for the Prosecution

F.A. MESSENGER, Det, C.I.D., Surrey Joint Police, Woking, having been duly sworn, states;

"I am Frederick Arthur Messenger, Det, C.I.D., Surrey Joint Police, Woking. On the 22nd, 23rd and 24th Oct 44 I made numerous enquiries at Inkerman Barracks with a view to tracing the driver of a 15 Cwt Army vehicle No. CZ4205226. At 4:15 p.m. on the 24th of Oct I saw Sgt. R.C. Oxley in "D" Sqn office. I said,"I am a Police Officer from Woking and am inquiring into the deaths of 2 Canadian soldiers. I have reason to believe that you were the driver of the truck which was reported as stolen from Inkerman Barracks which was involved in a fatal accident in Commercial Road, Woking at about 11:00 p.m. 21 Oct 44." Sgt. Oxley said, "You are right, I will make a full confession. The whole thing has been worrying me and I want to get it off my chest." Sgt. Oxley was most frank and straight-forward in his answers. I hereby produce a certified copy of the statement made to me by Sgt. Oxley and taken down in writing by me and read over to him and signed by him in the presence of Major D.P. Stewart."

The accused declines to cross-examine this witness.

F.A. Messenger

(F.A. MESSENGER) Det, CID,
Surrey Joint Police, Woking.

2nd Witness for the Prosecution

Major D.P. STEWART, an Officer of the Canadian Army Overseas, on the strength of No. 1 C.A.C.R.U., having been duly sworn, states;

"I am Major D.P. Stewart, employed as O.C., "D" Sqn, on the strength of No. 1 C.A.C.R.U. In regard to CZ-4205226 this was not authorized by myself or Capt. E.F.Whewell to make any trips after 1700 hrs 21 Oct 44. I hereby produce Transport Work ticket for Vehicle CZ-4205226, authorizing it to make trips during training hours. All trips outside of training hours must be duly authorized by Capt. E.F. Whewell or myself. Sgt. Oxley did not request the use of this vehicle on the night of 21 Oct 44."

The accused declines to cross-examine this witness.

(D.F. STEWART) Major,
O.C., "D" Sqn,
No. 1 C.A.C.R.U.

(page two follows)

SUMMARY OF EVIDENCE (Continued)

3rd Witness for the Prosecution

Capt. R.J. VAUGHAN, an Officer of the Canadian Army Overseas, on the strength of No. 1 C.A.C.R.U., having been duly sworn, states;

"I am Capt. R.J. Vaughan employed as Transport Officer, on the strength of 1 CACRU. I was called on Monday, 23 Oct 44 to identify a body, which I did identify as A-21141, Tpr. Bennett, G., employed as driver i/c in the Transport section of No. 1 C.A.C.R.U."

The accused declines to cross-examine this witness.

(R.J. VAUGHAN) Capt.,
No. 1 C.A.C.R.U.

4th Witness for the Prosecution

Lieut. W.B. FLEMING, an Officer of the Canadian Army Overseas, on the strength of No. 1 C.A.C.R.U., having been duly sworn, states;

"I am Lt. W.B. Fleming employed as 2 IC of the Wireless Wing, on the strength of 1 CACRU. On Monday 23 Oct 44 I was called upon to identify a body, which I identified as that of D-131637, Tpr. Cryderman, W.S., employed on the strength of No. 1 C.A.C.R.U. and being trained as Gunner OP. He had been on the Wing strength for approx six weeks."

The accused declines to cross-examine this witness.

(W.B. FLEMING) Lieut.,
No. 1 C.A.C.R.U.

5th Witness for the Prosecution

Lieut. K.L. VINE, an Officer of the Canadian Army Overseas, on the strength of No. 1 C.A.C.R.U., having been duly sworn, states;

"I am Lt. K.L. Vine on the strength of 1 CACRU being trained as a Reinforcement Officer. On 21 Oct 44 I was on duty as the Offr IC Woking Patrol. At approx 2305 hrs a message was received in the Woking Police Station where I was on duty that there had been a bad accident near the car park, Commercial Rd, Woking. I immediately proceeded there in my vehicle and found that a 15-Cwt truck had struck the rear of a parked 60-Cwt truck which was loading up men to bring them back to camp. The first person I came to on the ground was a Trooper who turned out to be Tpr. Bennett, G., I felt his pulse and to my knowledge he was dead. Shortly after this a doctor arrived

(page three follows)

SUMMARY OF EVIDENCE (Continued)

5th Witness (continued)

and pronounced him dead. I then went over to another body lying in the centre of the road and as the ambulance had arrived the body was put in the ambulance and I detailed Cpl. Davidson to go to the hospital with the body. I then began to take down particulars as to the drivers of the vehicles and the vehicles concerned in the accident. I asked several who was the driver of the 15-Cwt truck. No one knew his identity and the driver did not come forward at this time. I then returned to No. 1 C.A.C.R.U. and reported the accident to the Field Officer, Major D. Campbell. I then proceeded to the hospital where I found that the man taken in the ambulance was Tpr. Cryderman, W.S., who was one of the members of the Woking Patrol under me. I then went to the Woking Police Station and returned from there with my patrol to No. 1 C.A.C.R.U."

The accused declines to cross-examine this witness.

(R.L. VINE) Lieut.,
No. 1 C.A.C.R.U.

6th Witness for the Prosecution

D-77299, CPL. DAVIDSON, D., a soldier of the Canadian Army Overseas, on the strength of No. 1 C.A.C.R.U., having been duly sworn, states;

"I am D-77299, Cpl. Davidson, D., on the strength of No. 1 C.A.C.R.U. On 21 Oct 44 I was detailed as N.C.O. i/c Woking Patrol. At approx 2300 hrs I was supervising the loading of a 60-Cwt truck to take men back to 1 CACRU. Whilst I was standing by the truck I suddenly saw two headlights swing from behind the 60-Cwt. I then threw myself aside from the oncoming vehicle. When I got clear, I turned around and saw a man had been knocked to the pavement. I rushed to him and found he was unconscious. I went straight to the oncoming truck, a 15-Cwt, and was informed that a man was jammed between the two vehicles. The 15-Cwt was shifted sideways and the man released. I phoned for an ambulance and a doctor and when the doctor arrived he pronounced dead the body which was then identified as Tpr. Bennett, G. I then went with the injured man, who had been identified as Tpr. Cryderman,W.S., to the Victoria Hospital, Woking. I was later informed that he died at 0110 hrs 22 Oct 44."

Cross examined by the accused.

Q.1. Were the tail-lights of the 60-Cwt obscured from an oncoming vehicle?
A.1. Yes, definitely.

(D-77299, Cpl. DAVIDSON, D.)
No. 1 C.A.C.R.U.

(page four follows)

SUMMARY OF EVIDENCE (Continued)

7th Witness for the Prosecution

H-17700, Tpr. BALCUINAS, M., a soldier of the Canadian Army Overseas, on the strength of No. 1 C.A.C.R.U., having been duly sworn, states;

"I am H-17700, Tpr. Balcuinas, M. employed as driver Mech in the Transport Office of 1 CACRU. On 21 oct 44 I was night duty driver and was told to go to Woking and pick up some men at 2300 hrs which I proceeded to do. I was parked on Commercial Road in front of the Car Park in Woking, Surrey. While locking the right rear tail gate someone hollered, "Look Out" and looking up I saw headlights approaching. I tried to jump clear but was knocked down and grazed slightly. I jumped up and assisted in moving a 15-Cwt truck away from the side of my 60-Cwt W.D. Vehicle No. CL-4219543. This released a man who was jammed between the two vehicles. I also saw another man lying on the ground apparently unconscious. I started to gather information to make out a Road Accident Report and on inquiring for the driver of the 15-Cwt I was unable to locate him. No one stepped forward as the driver of the 15-Cwt."

Cross examined by the accused.

Q.1. Would you say that the tail light of your vehicle was obscured by the men milling around the rear of it?
A.1. Yes.

Q.2. Does the vehicle always stop on Commercial Road instead of in the car park?
A.2. Yes.

Q.3. Would you say as a driver, that the night of 21 Oct 44 was very dark making it difficult to drive?
A.3. Yes."

M. Balcuinas
(H-17700, Tpr. BALCUINAS, M.)
No. 1 C.A.C.R.U.

(page five follows)

SUMMARY OF EVIDENCE (Continued)

Documents referred to above, have been produced, read over to the accused, marked respectively Exhibits "A" & "B" and attached hereto.

(N.S. WADHAMS) Lieut.,
Officer detailed to take
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.

After the above caution the accused declines to make any statement.

The accused declines to call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of five 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.

(N.S. WADHAMS) Lieut.,
Officer detailed to take
Summary of Evidence.

In the Field,
27th October 1944.

COUNTER NUMBER 538167

HOUR 11 45

OPERATOR'S INITIALS O.G.

RELIEVING OPERATOR E.H.

DDD-143

GNR OUELLETTE A.

DND-143

FIELD GENERAL COURT-MARTIAL

CFA98 (In lieu of AFA3) 40-P.S.S./1000 (2004)

Convened by Order of Brig J.C.Stewart CBE DSO Comd "C" Group CRU dated 20 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) 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.
L-18457	Gnr	Alfred	OUELLETTE	1 CARU

PROCEEDINGS REVIEWED

J. Ruffiguelan Capt.
16 Mar 44. PROCEEDINGS OF TRIAL.
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

Held in the Fd in (country) England on (date(s)) 29 Feb 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(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 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 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 Pte Dumbarey 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(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 Lucraft	1 CRU
Member	Capt.	H. Hallsworth	3 CARU
Member	Lieut	J. F. Anderson	3 CARU
Judge-Advocate			
Prosecutor	Capt	F H Kelley	1 CARU
Defending Offr	Lieut	J A Nolan	1 CARU

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 D1 p 3.)

A8. The accused before arraignment make(s) (no) (a) 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 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. 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 & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

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

Accused: L-18457 Gnr OUELLETTE, Alfred - 1 CARU

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 of desertion but guilty of Absence without leave	
2nd ~~X~~			
3rd ~~X~~			
4th ~~X~~			
5th ~~X~~			
6th ~~X~~			

(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 10 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 six (6) months

(Sgd) Judge-Advocate, if any. Date awarded. 29 Feb 44 (Sgd) F D Lucraft 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 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 57, 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 3/Mar/44 (Sgd) J. C. STEWART, Brigadier, Commanding "C" Group, Can. Confirming Officer. (1)

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

Accused.	Date.	Signature of Offr.
L 18457 Gnr Ouellette Alfred	4 Mar 44	G.T. Beach Lt Col C.O. 1 C.A.R.U.

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*[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.)

FDT.

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 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)~~ FDT.
(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 as a witness. Do you intend to call witnesses on your behalf ? Ans No. Are they witnesses as to character only ? Ans —.
(1. RP ~~155~~ 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).)

FDT. 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).)

FDT. 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.)

FDT. 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.)

FDT. 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).)

FDT. 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) 71(D)
(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, No L.18457 Gunner Alfred OUELLETTE, R.C.A., on strength of No.1 Canadian Artillery Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE — WHILE ON ACTIVE SERVICE DESERTING HIS MAJESTY'S SERVICE
AA Sec 12(1)(a)

in that he

in the Field, when warned for draft, with intent to avoid service with such draft absented himself without leave from 0900 hrs 18 February 1944 until surrendering himself at 2120 hrs on 18 February 1944.

(Absent: 12 hours 20 minutes)

W A Townsley

(W.A. TOWNSLEY) COLONEL,
Commanding Officer,
No.1 Canadian Artillery Reinforcement Unit.
R.C.A. Canadian Army Overseas.

Dated at Bordon, Hants,
this 21st day of
February, 1944.

To be tried by Field General Court Martial

Brigadier
Commanding "C" Gp, Can Reinforcement Units
(Convening Officer)

Bordon, Hants

20 Feb 44

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/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.
L-18457	Gnr		Alfred	OUELLETTE	1 CARU

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 ~~[illegible]~~ committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~ attached and on (*date*) 26 Feb 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; ~~[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.
Lt-Col	F.D. Tweedie	HQ CRU

MEMBERS.

Rank.	Named or detailed. RP 106.	Unit.
Captain	detailed by CO	3 CARU
Lieutenant	detailed by CO	3 CARU

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.) — [signature] (Signed personally. RP 105 fn 2.) — Brigadier (Rank.)

Date 26 Feb 44

Commanding "C" Group - Cdn Reinforcement Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

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

I certify that I have this morning examined No H9457 Gnr Ouellette A.
(Rank) (name)

of 1 CARU and in my opinion he is fit ~~unfit~~ to undergo

trial by Court Martial.

Station Field

Date 29th Feb. 44

Sgd. ..... Capt. .....
(Medical Officer)

L.18457 Gnr. Ouellette, A. No.1 C.A.R.U.

The following witnesses were called and cross-examined:

First Witness Major S.A. Blakely No.1 C.A.R.U.

Q. In connection with Gnr Ouellette being warned for draft, will you tell the Court what you know about that?

A. On the 24 Jan 44, I formally warned a body of men for draft, amongst whom was Gnr Ouellette.

Q. Do you recognize the accused, Gnr. Ouellette?

A. Yes, I recognize the accused.

Q. What was the warning, as read to the parade?

A. I read the warning to the parade, and have in my possession the original paper, which reads as follows:

"You have been selected to proceed on a draft, 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".

If you are convicted of desertion the Court has the power to sentence you to a maximum sentence of penal servitude for life.

A parade will be called at a later date when you will be told the exact time and place of departure".

Document offered and received in evidence and marked Exhibit "A".

~~(continued on Page 3)~~

Q. Now, with regard to Gnr. Ouellette being warned to proceed on this draft, what happened?
A. The 2nd warning was given, giving time of the last parade before the draft was to leave.

Q. When was this warning given?
A. This warning was given at 0900 hrs 18 Feb 44.

Q. Was Gnr. Ouellette present at the time that the warning was given?
A. No, Gnr. Ouellette was not present.

Q. That was at 0900 hrs, 18 Feb 44, on the final parade?
A. Yes.

Q. What happend on the final parade?
A. On the final parade the Mustering Officer from Records Office mustered the parade and called the nominal roll.

Q. Was any intimation given before 0900 hrs parade, 18 Feb 44, that it was an Overseas draft?
A. No, not to my knowledge.

Q. When did the draft leave?
A. The draft left at 1950 hrs, 18 Feb 44.

Q. Was the accused in your Battery at that time?
A. Yes.

Q. Had he been granted any leave? Was he on leave at 0900 hrs, 18 Feb 44?
A. To my knowledge he was not. No.

Cross-examined by Defending Officer:

Q. During the period that the draft was waiting did anyone else absent himself, who was going on this draft?
A. Yes.

Q. One or more?
A. Two.

Q. Have they been delt with in your knowledge?
A. Yes.

Q. Summarily or otherwise?
A. They were dealt with by the O.C. of the Wing.

Q. Were they charged with desertion?
A. No. They were charged with Absence Without Leave.

Second Witness — Lt. D.E. Hill, No.1 C.A.R.U.

Q. Do you know the accused?
A. I do.

Q. Will you tell the court what you know about him with regard to the draft?
A. On Friday, 18 Feb 44, I called the roll of the draft and the accused did not answer his name, and neither did he come up to the desk to receive his embarkation card. The name of the accused was called at approximately 1720 hrs, 18 Feb 44.

Third Witness — A.55356 S/t. Thompson, J.L. No.1 C.A.R.U.

Q. Do you know the accused?
A. Yes.

Q. Will you tell the court what you know about him with regard to the draft?

(continued on page 4)

A. On 24 Jan 44, I was present when draft "Hendley" was warned by Major Blakely. Gnr. Ouellette answered his name and I recognized him at the time. At 0900 hrs 18 Feb 44 the final warning of draft "Hendley" took place and Gnr. Ouellette was absent. He was also absent on the final draft parade at 1630 hrs 18 Feb 44. On this warning parade each man, as his name was called, answered with number and initials. They were warned by Major Blakely that if they were absent when the draft left they would be liable for charge of desertion.

Q. Where were these parades fallen in?
A. These parades assembled between blocks 3 and 4 and marched from there to place of warning.

Q. Was that there usual place of parade?
A. Yes.

Q. How many men were on the parade of 24 Jan 44?
A. Approximately 120 Officers and men.

Q. How did Major Blakely speak in giving the warning?
A. Loudly.

Q. Where were you standing in relation to him?
A. Right alongside him.

Fourth Witness

B.21371 Sjt. Laxer, R.M. No.1 C.A.R.U.

Q. Do you know the accused?
A. No.

Q. Do you know where the accused is in this room?
A. Yes.

Q. You said you didn't know him?
A. I don't except having seen him on one occasion. On Friday 18 Feb 44, when I was commander of the main gate guard, Gnr Ouellette reported into the guard room at 2120 hrs, stating that he had been absent without leave and that he had missed "Hendley" draft.

Statement of Accused: duly sworn:

Questioned by Defending Officer:

Q. When did you enlist?
A. In March, 1941.

Q. When did you come Overseas?
A. In November, 1941.

Q. With what unit did you come Overseas?
A. 13th Field Regiment.

Q. In April 44 did you have any pressing problem?
A. Yes. I lost my wife.

Q. What steps did you take?
A. I applied for compassionate leave.

Q. Have you any children?
A. Yes, five. They are from five to ten years of age.

Q. Was compassionate leave granted to you?
A. No.

Q. What steps did you take next?
A. I was paraded before my Major, and requested to be transferred to No.1 C.A.R.U. I thought I could get more action from here.

(continued on page 5)

Q. What date did you come to No.1 C.A.R.U.?
A. I left the Regiment on 15 Jul 43.

Q. Did you again apply for compassionate leave?
A. Yes.

Q. With what success?
A. I was turned down again.

Q. In the meantime did you have any communication from home as to what happened to the children?
A. Yes. The children were put in an Orphans Home and there was nothing I could do about it.

Q. On 24 Jan 44 do you remember being on parade with 120 other men and being warned for draft?
A. Yes.

Q. Did you come out on "Hendley" draft parades from that time on?
A. Yes.

Q. Were there daily parades held since 24 Jan 44 until this time?
A. Yes, up until the 17 Feb 44.

Q. Then what happened?
A. I went out to get tight.

Q. Had you any idea when the draft was leaving?
A. No.

Q. When did you discover that "Hendley" draft had left?
A. When I returned from absent without leave.

Q. Had you any indication before that, that the draft was about to move off?
A. No.

Cross-examined by President of Court:

Q. You stated when you gave yourself up to the guard that you had missed the draft. When did you find out you had missed the draft?
A. When I came to the NAAFI for a cup of tea before reporting to the guard room.

Q. Where were you during the time of your absence?
A. I was in Aldershot.

Q. Had you been drunk before absence on 17 Feb 44?
A. I was drunk once before that time, but had been drinking off and on all the time.

Q. How much pay did you receive?
A. Three pounds.

Q. When did you get back from Aldershot?
A. I got back about 10 minutes to nine.

Q. How did you get back?
A. By bus.

Q. Where did you stay, overnight, while in Aldershot?
A. I do not know Aldershot very well, and another soldier took me to a place to stay. I don't know where it is.

Q. Can you purchase beer or liquor in camp?
A. Yes. At the NAAFI.

Q. Where did you start drinking?
A. In the NAAFI.

(continued on page 6)

SUMMING UP BY PROSECUTION

That the accused was warned for draft and that he was absent at the time the draft left is quite apparent. He had been warned for draft and warned that if he missed the draft he would be liable to be charged with desertion. The matter of desertion becomes a question of intent, and I should like to direct the Court to Page 109 of MML, para 23, end of 3rd line. The accused reported to the N.C.O. in charge of the guard and said I missed the draft, or words to that effect. It seems likely, therefore, that he knew the draft had gone.

SUMMING UP BY DEFENCE

In the same connection I would like to direct the Court to a section of the AA, P.19 para 17, which also deals with desertion. Here we have the accused who absented himself for one day only, and then returned to camp by bus, and turned himself into the guard room. Nothing can be more clear than that the accused did not intend to desert. From his MFM 6 it appears that this is more or less of a habit with him. There have been, in the past, six charges laid against him and the longest period was for 36 hours absence. This habit, in all probability, resulted from his domestic troubles. I am not trying to play on the sympathy of the court. He is a married man with five children and his wife has died. He is anxious to see that his children have the proper care, not the care of others, but care according to his own standards, and he is trying to get compassionate leave. I have papers here, which are a report sent down with regard to requests for compassionate leave. I discussed the man's case history to establish that there was no intention to desert. Far from that being the case he went away and came back of his own accord. With due respect to the prosecution, he has failed to establish that one essential ingredient, intention to desert on the part of the defendent.

L 18457 Gnr Ouellette, A
Field General Court Martial
29 Feb 44

Plea in Mitigation

Ouellette enlisted on March 4, 1941 and came overseas in November 1941. At the time of his enlistment he was a married man and the father of five youngsters. He was a driver I.C. with the 13th Field Regt up until July 15, 1943, and was considered a good soldier. In April 1943, however, he was unfortunate to lose his wife and he was in the unhappy position of being 3000 miles away from his motherless family, the oldest of whom was only nine. He applied for compassionate leave with the express purpose of returning to Canada and making arrangements for his young family to be taken care of by relatives. Permission was refused. Thinking that he might have better success if he applied from Cairo he asked his Battery Cmdr to send him to Cairo. The Battery Cmdr was unwilling to lose him because he was a good soldier but finally agreed for Ouellette's own sake. In Cairo, Ouellette was again applied for compassionate leave, which was again denied.

Meantime Ouellette was seeking solace in liquor and went A.W.L. a number of times when under the influence but never for longer than a couple of days. So long as he was kept busy he kept out of trouble but whenever he dwelt on his troubles the temptation to go on a bingo proved too strong for him. Finally he was warned for special draft and was pleased at the thought that he would have something active to do to occupy his mind. The special draft remained in Cairo from Jan 24 until ~~[illegible]~~ after the middle of February, over three weeks. Ouellette reported faithfully on every parade. Finally, however, he felt that he had to have a drink and on the evening of Feb 27 he started drinking. Unfortunately a man in Ouellette's frame of mind cannot stop with one drink and the result was he went on a tear which kept him away from parades throughout one entire day. It so happened that the draft left on this particular day, which is the reason Ouellette is up for court martial. In fact he had no idea that they would be going that day, as no hint was given that ~~they~~ such would be the case. In fact it was only on the morning parade of Feb 18, which Ouellette did not attend, that the draft was warned

FDT.

that they would be leaving that same day.

Obviously there was no intent on Ouellette's part to desert his majesty's service or to avoid proceeding on the special draft. ~~The~~ "Intention" is of paramount importance in a change of this nature. All the circumstances of this case tend to show that Ouellette had no such intention. It was unfortunate that the draft should leave on the very day he took a drink too many. The fact that he returned the same day, a few hours after the draft left is ample evidence to show that there was no intention on his part to escape the draft. I respectfully suggest that every consideration should be given to Ouellette's mental attitude which was brought on by worry about his young family. The man has been a good soldier & would prove useful in action. I respectfully suggest that he be dealt with very leniently.

The whole respectfully submitted

John A. Nolan Brant
Defending Officer

"H" Bty., No. 1 C.A.R.U.,
24 Jan 44.

6-2-0/Jens

SCHEME "HENLEY"

1. The personnel listed on the attached Nominal Roll were paraded before me at Quebec Barracks, Bordon, Hants, on 24 Jan 44 and were warned for Special Draft as follows:

(i) You have been selected to proceed on a draft, and you are now warned that you must be present and ready to go when the draft is sent off.

(ii) 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".

(iii) If you are convicted of desertion the Court has the power to sentence you to a maximum sentence of penal servitude for life.

(iv) A parade will be called at a later date when you will be told the exact time and place of departure.

2. I am prepared to give evidence on Oath that I personally checked the identification of all personnel listed on the attached Nominal Roll, and that they were all present and duly warned by me in accordance with the above statement, and that no one present could have failed to hear the warning.

Ex 'A' J.D.I.

(SIGNED) S A Blakely Major
(S.A. BLAKELY) MAJOR R.C.A.

3. We the undersigned were present when the personnel on the attached Nominal Roll were paraded at Quebec Barracks, Bordon, Hants, on 24 Jan 44, and we are prepared to give evidence on Oath that:

(i) The identity of all present was checked.
(ii) The warning given was as written above.
(iii) That no one present could have failed to hear the warning.

E.J. Carey, Lieut

Norman C. Fort Capt.

X [illegible] Lt.

X R.P. Murphy Lt.

[illegible]

[illegible] McCarty [illegible]

C-26363

X R.M. Bartnell Sgt.

X F.E. Haney Sgt

M66607

Certified true copy Pt I Ord 41 d/10 Feb 44
adj

C. E. Duyman
A/ADM OFFR
Officer having custody of original document

DAILY ORDERS
BY
COLONEL W.A. TOWNSLEY, M.C., E.D.,
COMMANDING OFFICER
HQ. 1 CDN ARTILLERY REINFORCEMENT UNIT
N.C.A. CDN ARMY OVERSEAS

PART I ORDERS THURSDAY 10 FEB 44 No. 41

1. DETAIL OF DUTIES

(a) Field Officer of the Week Week ending 13 Feb 44.		Capt G.C. D'Arcy		
(b) Duty Officer Hrs Mess	10 Feb 44	Capt S.C. Wellington		
Next for Duty	11 Feb 44	Major A.S. Raue		
Next for Duty	12 Feb 44	Capt J.A. Bainer		
(c) Subaltern of the Day	10 Feb 44	Lieut J.R. King		
Next for Duty	11 Feb 44	Lieut J.R. King		
Next for Duty	12 Feb 44	Lieut J.R. King		
(d) Duty Officer	10 Feb 44	Lieut H.P. Armstrong		
Next for Duty	11 Feb 44	Lieut E.A. Burns		
Next for Duty	12 Feb 44	Lieut E.A. Burns		
(e) Orderly Sergeant	10 Feb 44	K.[illegible]005	Sjt Beck R.S.	
(f) Sjt Main Gate Guard	10 Feb 44	K.70075	Sjt Turner, L.W.	"A"
Next for Duty	11 Feb 44	H.67558	L/Sjt Smith G.E.M.	"C"
Next for Duty	12 Feb 44	C.43715	Sjt Hayden D.E.	"C"
(g) Sjt Brox Road Guard	10 Feb 44	A.31059	Sjt Rose A.D.	"B"
Next for Duty	11 Feb 44	B.33461	Sjt Davis C.R.	"F"
Next for Duty	12 Feb 44	K.21105	L/Sjt Woodward G.H.	"H"
(h) Bdr Main Gate Guard	10 Feb 44	D.47859	Bdr Blake D.M.	"G"
Next for Duty	11 Feb 44	C.3014	Bdr Chambers J.H.	"S"
Next for Duty	12 Feb 44	M.4160	Bdr Parker J.A.	"D"
(i) Bdr Exchange Guard	10 Feb 44	G.7093	Bdr Smith M.	"D"
Next for Duty	11 Feb 44	[illegible].6940	L/Bdr Smith C.C.	"S"
Next for Duty	12 Feb 44	M.3252	L/Bdr Walsh D.J.	"S"
(j) Bdr Ammunition Guard	10 Feb 44	G.7108	Bdr Ryan E.	"D"
Next for Duty	11 Feb 44	H.47437	Bdr MacDonald D.G.	"G"
Next for Duty	12 Feb 44	A.65794	Bdr Woods P.J.	"D"
(k) Duty Wing Week ending 13 Feb 44		"Q" Wing		

2. COMMAND

Major A.E. Fort assumes Acting Command of "P" Training Wing in the absence of Lt. Col. G.T. Inch, M.C., V.D., w.e.f. 10 Feb 44.

3. NOTICE BOARD INFORMATION

1. The attention of all ranks is directed to the m/n as follows:-

PHOTOGRAPHY CONTROL

SECURITY MEASURES - PRIVATE CORRESPONDENCE

(Continued on page ii)

(a) WARNING FOR DRAFT

(a) The u/m personnel were warned for draft on 24 Jan 44.
(b) All were present on parade.
(c) Warning was given by Major S.A. Blakely.
(d) Nominal roll was certified by Lieut E.F. Carey, Capt N.C. Fort, A.55356 Sjt Thompson, J.L., A.31007 Sjt McLarty, J.A. (These pers not proceeding on draft), Lieut W.R.K. Matterson, Lieut R.F. Murphy, C.26363 Sjt Barkwell, R.H., M.66607 Sjt Forsyth, J.E. (These pers are proceeding on draft):

H.101851	Gnr	Atkinson W.R.	F.46001	Gnr	Kehoe L.D.
L.64212	"	Allom O.L.	H.60663	"	Kutzy G.
R.6433	"	Abbey A.M.	C.102110	"	Kerwin J.E.
H.24109	Bdr	Aitkenhead D.	H.60895	"	Kowlyk S.W.
C.26363	Sjt	Barkwell R.H.	H.60452	"	Kingshott R.H.
F.87328	Gnr	Byard T.L.	L.101353	"	Kennedy J.E.
L.60817	"	Borquist F.H.	H.67149	"	Kinsman E.F.
H.59945	"	Barnett G.H.	L.92106	L/Bdr	Keeler J.A.
L.100073	"	Blades I.F.	H.92220	Gnr	Loronewich R.R.
L.57342	"	Bush R.R.	F.C2005	"	Lant D.H.
R.114937	"	Beauchamp G.	G.57035	"	Little D.W.
H.54717	"	Bakalak M.	K.46989	"	Lowe W.A.
K.69393	"	Burkitt D.W.J.	L.56451	"	Langan A.
A.33089	"	Carter J.A.	C.1400	"	Lalonde A.J.
A.32043	"	Coll S.R.	K.73001	"	Lawry A.G.
C.48654	"	Cournyea J.G.	B.16730	"	Moore J.R.
M.42165	"	Comin I.	H.12166	"	Morrison R.S.
B.6029	"	Cadieux F.W.	L.35305	"	Metz D.S.
L.101990	"	Carswell A.R.	B.6043	"	Morgan C.H.
L.74899	"	Churchill L.	B.23367	"	Miller J.D.
M.36754	Sjt	Cantwell N.J.	H.6133	L/Sjt	Munn J.
C.1946	Gnr	Cameron J.E.	H.66692	Gnr	Maher W.J.
R.131462	"	Le Rose J.	D.11607	"	Moore R.
C.48750	"	Drumgoole J.P.	C.957	"	Mason W.H.
R.1827	"	Dupont M.	H.24105	"	McKenzie H.
F.77633	"	Doucette J.W.	B.43920	"	McKinnon G.R.
L.45215	"	Draper P.	C.6975	"	McKay R.T.
K.2013	"	Davidson H.L.	B.44575	"	McKinnon G.G.
T.1320	"	Downing L.S.	D.53329	"	McGill R.L.
D.6020	L/Bdr	Davies B.J.	B.23739	"	McCarten N.J.
K.48971	Gnr	Duncombe W.E.	B.11251	"	McEwen G.
R.64146	"	Dolman W.G.	A.66301	"	MacGregor J.
R.4139	DRMS	Dionne J.H.	C.26233	Bdr	McGuire J.H.
H.3365	Gnr	Einarson H.E.	C.1811	Gnr	McKinnon C.F.
M.101518	"	Elbert V.R.	F.88566	"	Nolan E.F.
R.29814	"	Falkovitch E.	L.10043	"	Neely K.A.
H.66607	Sjt	Forsyth J.E.	H.101372	"	Nemez K.
.45134	Gnr	Fockler P.C.	D.7106	"	Noomany L.
K.65232	"	Ford R.D....	L.10457	"	Oulette A.
F.85019	"	Farnell R.P.	L.26245	"	Pogson T.S.
R.45841	"	Fougere J.S.	C.26227	Bdr	Pinfold E.H.
M.34918	"	Ford J.W.	M.29841	Gnr	Prosser V.D.
R.3258	"	Findlay J.A.	A.102991	"	Pierce J.L.
R.30770	"	Fish C.W.	L.27047	"	Robillard L.G.
C.38178	"	Godin J.L.	D.132273	L/Bdr	Ruck H.R.
A.65820	"	Graff J.	G.19654	Gnr	Rabey K.S.
D.7376	"	Gillmeister E.A.	G.3073	"	Robertson R.W.
R.79379	L/Bdr	Galiegue W.C.	B.47164	"	Russell S.R.J.
A.28661	"	Good J.A.	L.6345	"	Ross J.E.
L.20202	Gnr	Gilbert P.E.	B.47638	"	Seminuik P.
L.63193	"	Guy P.E.	K.72775	"	Shambrook A.W.E.
R.43724	"	Howard G.L.	H.67315	"	Simpson G.J.W.
R.43827	"	Miltz R.M.	L.64837	"	Shapko G.
L.105557	"	Haanen E.A.	H.59705	"	Spratt M.
H.92365	"	Henry R.W.	M.35022	"	Shoemaker F.A.
K.76623	"	Hart C.L.	B.41219	"	Simpson C.
M.102760	"	Hanson A.E.	H.54042	Bdr	Sherrington R.J.
L.59737	"	Haid ..F.	M.1152	Gnr	Stratton R.
G.62015	"	Kingston D.L.	M.66015	"	Schlosser A.

(Continued on page iii)

4.
(a) WARNING FOR DRAFT (Continued)

M.105839	Gnr	Turton J.A.E.	C.101322	Gnr	Young G.M.
M.171517	"	Taylor C.C.	C.23316	L/Sjt	Cook T.F.
[illegible]	"	Tunbridge R.L.	[illegible]	Gnr	Smith A.W.
M.101666	"	Unland J.[illegible]	L.32106	"	Cobbe W.B.
M.101880	"	Walker W.J.	C.75000	"	Hall H.
H.59356	"	Williamson [illegible].V.	C.1351	"	Jones G.G.
M.29105	"	White P.J.	M.43527	"	Ferrel D.L.
H.69842	"	Walker C.E.	M.43014	"	Milker A.P.
M.101773	"	Wilkinson J.L.	A.17146	"	Hall J.D.
D.13594	"	White S.J.			

4.
(b) WARNING FOR DRAFT

(a) The u/m personnel were warned for draft on 26 Jan 44.
(b) All were present on parade.
(c) Warning was given by Major S.A. Blakely.
(d) Nominal roll was certified by Lieut E.F. Carey, Capt N.C. Fort, A.55356 Sjt Thompson, J.L., A.31007 Sjt McLarty, J.A. (These per not proceeding on draft), Lieut W.R.K. Matterson, Lieut R.P. Murphy, C.26363 Sjt Barkwell, R.H., M.66607 Sjt Forsyth, J.E. (These pers are proceeding on draft):

B.6884	Gnr	Burnett J.	H.59989	Gnr	Luzny T.A.
C.18570	"	Doyle P.A.	L.103077	"	Saul J.
M.43523	"	Hoppus L.L.	M.3650	"	Shaw M.W.

4.
(c) WARNING FOR DRAFT

(a) The u/m was warned for draft on 29 January 44.
(b) Warning was given by Major S.A. Blakely.
(c) Nominal roll was certified by Major R.V. Gray, Capt N.C. Fort, A.55356 Sjt Thompson, J.L., A.31007 Sjt McLarty, J.A. (These pers not proceeding on draft), Lieut W.R.K. Matterson, Lieut R.P. Murphy, C.26363 Sjt Barkwell, R.H., M.66607 Sjt Forsyth, J.E. (These pers are proceeding on draft):

C.33594 Gnr Tessier, J.M.L.

4.
(d) WARNING FOR DRAFT

(a) The u/m personnel were warned for draft on 31 Jan 44.
(b) All were present on parade.
(c) Warning was given by Major S.A. Blakely.
(d) Nominal roll was certified by Capt F.[illegible]. Kelley, Capt N.C. Fort, P.9007 BSM Lusk, A., A.55356 Sjt Thompson, J.L. (These pers not proceeding on draft):

Capt	W.	Burianyk	Capt	R.J.	Mutcheson
Lieut	R.P.	Murphy	Lieut	T.H.W.	Greer
Lieut	D.[illegible].	Walsh	Lieut	O.E.	Wyler
Lieut	J.D.	Waddington	Lieut	R.R.	Grondin
Lieut	J.[illegible].	Stone	Lieut	J.L.	Bond
Lieut	[illegible].A.	Blain	Lieut	W.R.K.	Matterson
Lieut	[illegible].C.	Stinson	Lieut	G.H.	Fournier
Lieut	S.S.	Reisman	Lieut	L.D.	Farrelly

4.
(e) WARNING FOR DRAFT

(a) The u/m was warned for draft on 2 Feb 44.
(b) Warning was given by Major S.A. Blakely.
(c) Nominal roll was certified by Capt F.[illegible]. Kelley, Capt L.B. Skinner, P.9007 BSM Lusk, A., A.55356 Sjt Thompson, J.L. (These pers not proceeding on draft):-

Capt J.F.W. Tennant.

(Continued on page iv)

4.
(c) WARNING FOR DRAFT (Continued)

(a) The u/m personnel were warned for draft on 1 Feb 44.
(b) All were present on parade.
(c) Warning was given by Major S.A. Blakely.
(d) Nominal roll was certified by Lieut D.A. Muir, Lieut D.E. Edmiston, A.31007 Sjt McLarty, J.A., A.55356 Sjt Thompson, J.L., (Those pers not proceeding on draft), Lieut L.D. Farrelly, Lieut R.P. Murphy, M.6153 L/Sjt Munn, J., M.36607 Sjt Forsyth, J.E. (Those pers are proceeding on draft)t.

C.1724	Gnr	Anderson R.R.	H.35585	Gnr	Miners E.L.
C.102126	"	Arsand C.J.	D.93145	"	McLaughlin D.P.
A.103755	"	Austin D.C.	M.24[illegible]0	"	McKillop E.H.
H.35417	"	Anderson R.E.	F.66371	"	McDonald A.
D.110306	"	Armstrong P.D.	M.30750	Bdr	McGill D.K.
D.131440	"	Brazeau I.E.	M.36090	Gnr	Pawchuk M.M.
C.197	"	Barnes W.R.	L.19783	"	Perner L.H.
K.57619	"	Canford W.J.	F.[illegible]320	"	Quaye L.E.
A.31141	Bdr	Brown M.S.	K.[illegible]259	"	Richter W.A.
M.36186	Gnr	Czeck J.	M.36563	"	Rivers P.
[illegible].62702	"	Campbell A.T.	C.[illegible]196	"	Reynolds E.J.
D.113795	"	Coward J.A.	R.72570	"	Morison J.C.
P.76389	"	Doyle C.M.	[illegible].6425	"	Ross W.K.
L.104409	"	Davies R.W.	D.131152	"	Ritchie H.M.
K.74454	"	Dailey D.W.	K.66401	"	Rayfuse P.J.
K.16115	"	Esch V.W.	[illegible].30152	"	St. Amant G.L.
C.9960	"	Ferguson D.N.	D.[illegible]2[illegible]5	"	Spitzig H.
G.3057	"	Francis L.T.	C.13541	"	Smith J.F.
C.19659	Sjt	Fairbairn A.E.	L.55509	"	Sinclair F.
M.45503	Gnr	Green L.W.	M.3210	L/Bdr	Sontag R.L.
[illegible].31159	"	Holmes C.M.	L.19544	Gnr	Tokaryk F.
[illegible].127760	"	Hardman B.	B.111202	"	Tomchishin M.A.
C.75000	"	Hall H.	L.25867	"	Thibeault F.J.
K.[illegible]0981	"	Hunt R.	D.41747	"	Thompson C.R.R.
K.75755	"	Haigh R.	F.79064	"	Whynot I.A.
C.36906	"	Kirk R.E.	K.10257	"	Westle J.L.
C.35403	"	Lock R.	C.1356	"	Wallace J.W.
D.6144	"	Latimer H.R.	K.6028	"	Watson C.A.M.
D.48038	"	Lawatsky J.W.	F.[illegible]9206	"	Wildsmith G.F.
M.[illegible]0795	"	Martens A.	R.24935	"	Morley F.
M.[illegible]6692	"	Maher T.J.	F.44[illegible]86	"	Tunbridge R.L.
K.16012	"	Mitchell W.B.	D.110041	"	Aldred C.

4.
(c) WARNING FOR DRAFT

(a) The u/m personnel were warned for draft on 4 Feb 44.
(b) All were present on parade.
(c) Warning was given by Major S.A. Blakely.
(d) Nominal Roll was certified by Capt F.T. Kelley, Lieut R.C.Smith, A.31007 Sjt McLarty, J.A., A.55356 Sjt Thompson, J.L., (Those pers not proceeding on draft) Lieut W.A.R. Matterson, Lieut R.P. Murphy, C.26365 Sjt Darkwell, R.[illegible]., M.36607 Sjt Forsyth, J.F., (Those pers are proceeding on draft)t.

L.170	L/Sjt	Bulmer A.V.	[illegible].44935	Gnr	Morley F.
D.46437	Gnr	Bullock T.L.	[illegible].66371	"	McDonald A.
G.3155	L/Sjt	Brewer C.E.	M.102353	"	McCulloch W.R.
L.[illegible]6106	Gnr	Cobbe W.B.	[illegible].30065	"	Noble A.F.
M.62702	"	Campbell A.T.	A.103128	Bdr	Sheldon E.A.
U.2127.	"	Clarke L.F.H.	L.154213	Gnr	Steele R.M.J.
L.104409	"	Davies R.W.	L.34092	"	Swatzky E.[illegible].
K.[illegible]9921	"	Hunt R.	M.103751	"	Sparks E.E.
K.71056	"	Manley D.A.	K.70075	L/Sjt	Turner L.W.
A.53200	"	Houston D.W.	A.116613	Gnr	Tulik J.
C.247	"	Kinkley G.R.	M.95618	"	White J.A.
D.44831	"	Lonoury R.T.	D.132765	"	Winsor C.A.
D.21990	"	Lewis A.	A.103605	L/Bdr	Wyles V.E.
M.66692	"	Maher T.J.	F.10598	Gnr	Wallis S.G.
K.16513	"	Marshall G.W.	D.45041	"	Young S.H.
C.102065	"	Morgan G.J.			
L.59014	"	Master E.C.			

(Continued on page v)

3.
(b) WARNING FOR DRAFT (Continued)

(a) The u/m personnel were warned for draft on 5 Feb 44.
(b) All were present on parade.
(c) Warning was given by Major S.A. Blakely.
(d) Nominal roll was certified by Capt L.B. Skinner, Lieut R.O. Smith, A.31007 Sjt McLarty, J.A., A.55356 Sjt Thompson, J.L. (Those pers not proceeding on draft) Lieut W.R.K. Matterson, Lieut R.P. Murphy, C.26363 Sjt Barkwell, R.H., M.66607 Sjt Forsyth, J.E. (Those pers are proceeding on draft):

B.110941	Gnr	Alldred C.A.	L.416	Gnr	Patterson A.J.
K.69176	"	Bellamy T.J.	B.11178	"	Politi R.A.
D.118023	"	Lamb H.W.	B.131438	"	Rhodes D.J.
P.7525	L/Bdr	McLaine J.W.	G.24251	"	Turnbull J.H.
C.101962	Gnr	MacPherson J.A.	M.3232	L/Bdr	Walsh D.J.
			B.112238	Gnr	O'Halloran W.P.

4.
(i) WARNING FOR DRAFT

(a) The u/m personnel were warned for draft on 8 Feb 44.
(b) All were present on parade.
(c) Warning was given by Major S.A. Blakely.
(d) Nominal roll was certified by Capt A.D. Powis, Lieut R.O. Smith, A.555386 Sjt Thompson, J.L., A.31007 Sjt McLarty, J.A. (Those pers not proceeding on draft) Lieut R.P. Murphy, Lieut W.R.K. Matterson, C.26363 Sjt Barkwell, R.H., M.66607 Sjt Forsyth, J.E., (Those pers are proceeding on draft):

M.60746	Gnr	Burbidge D.W.	C.63	Gnr	Lewis L.E.
C.51303	L/Bdr	Etcher R.L.	B.41162	"	Manning D.C.
G.54461	"	Hathoway L.J.	H.60593	L/Sjt	Scott W.A.
M.67614	"	Galusha R.E.	B.110963	Gnr	Thompson C.E.

C.R. Ostrom

(C.R.OSTROM) Major, R.C.A.
Administrative Officer,
No. 1 Cdn Artillery Rft Unit.

N O T I C E S

1. CANADIAN ARMY SHOWS - UNIT "A"

1. The m/n Party are performing at St. Lucia Gym on Friday 11 Feb 44 at 1900 hrs. All Ranks are invited.

2. L.N. RAILWAY/BORDON - LISS

1.(a) Owing to numerous cases of vandalism which have recently taken place in passengerstock belonging to the Longmoor Mil Rly, when upholstery has been slashed, leather straps removed and windows deliberately broken, the Comd Transportation Trg Centre SE, has reluctantly decided to suspend the normal passenger service during the period 1300 hrs on Sat 5 Feb until 0600 hrs on Mon 7 Feb.

(b) If these acts of deliberate destruction still continue it may be necessary to discontinue altogether the evening passenger service, during which period most of these incidents occur.

3. BOXING

CRU Individual Boxing Semi-final and Championship will be held on 9 and 10 Feb 44 at Garrison Theatre, Farnborough Rd, Aldershot, Programme starting each evening at 1900 hrs.

DAILY ORDERS
BY
COLONEL W.A. TOWNSLEY, M.C., E.D.,
COMMANDING OFFICER
NO. 1 CDN ARTILLERY REINFORCEMENT UNIT
R.C.A. CDN ARMY OVERSEAS

No. 50

PART I ORDERS SATURDAY 19 FEB 44

1. DETAIL OF DUTIES

(a) Field Officer of the Week — Major S.A. MacDonald
Week ending 27 Feb 44

(b) Duty Officer Gnrs Mess — 19 Feb 44 Capt J.A. Baine
Next for Duty — 20 Feb 44 Capt R.H. Craig
Next for Duty — 21 Feb 44 Major K.S. Osler

(c) Subaltern of the Day — 19 Feb 44 Lieut F.H. Farquhar
Next for Duty — 20 Feb 44 Lieut E.A. Running
Next for Duty — 21 Feb 44 Lieut J.B. Bahl

(d) Duty Officer — 19 Feb 44 Lieut [illegible]. Lachapelle
Next for Duty — 20 Feb 44 Lieut A.M. Clements
Next for Duty — 21 Feb 44 Lieut R.F. Black

(e) Orderly Sergeant — 19 Feb 44 H.5151 Sjt Abramson G.

(f) Sjt Main Gate Guard — 19 Feb 44 D.16859 L/Sjt Courts G. "C"
Next for Duty — 20 Feb 44 D.93389 Sjt Nicol J. "B"
Next for Duty — 21 Feb 44 E.38611 Sjt Colling E.A. "C"

(g) Sjt Broadhead Guard — 19 Feb 44 M.44009 Sjt Parsons W.V. "H"
Next for Duty — 20 Feb 44 R.22596 Sjt Kemp W.W. "B"
Next for Duty — 21 Feb 44 H.35018 Sjt Thompson A.L. "F"

(h) Bdr Main Gate Guard — 19 Feb 44 G.50631 Bdr Schriver M. "G"
Next for Duty — 20 Feb 44 M.56222 L/Bdr Boyd D.J. "F"
Next for Duty — 21 Feb 44 F.13932 L/Bdr Clark J. A/W

(i) Bdr Exchange Guard — 19 Feb 44 M.105381 L/Bdr Weiler P. "E"
Next for Duty — 20 Feb 44 G.8130 Bdr Carter F.M. "B"
Next for Duty — 21 Feb 44 H.60620 Bdr Smith N.D. "F"

(j) Bdr Ammunition Guard — 19 Feb 44 K.11097 L/Bdr Burton P. "S"
Next for Duty — 20 Feb 44 D.7669 L/Bdr Miller C. "H"
Next for Duty — 21 Feb 44 G.3766 Bdr Sullis H.W. "G"

(k) Duty Wing — "Q" Wing
Week ending 27 Feb 44

2. INTE POSTINGS
Amendment
Ref Part I Order No. 44 d/13 Feb 44 Para 4(i) insofar as it concerns the u/m is cancelled:-
B.112894 Bdr McRae, A.[illegible] F.1[illegible] Gnr McDonald, S.[illegible]
C.33595 Gnr Tessier, M.R.

3. INTERFERENCE WITH OBJECTS DROPPED FROM THE AIR

1. Crashed aircraft, aircraft parts, U.X.Bs., bomb containers and all other objects dropped from the air by enemy or allied aircraft will not be removed or interfered with in any way. On discovery of any such objects units will make an immediate report to Brit Sub-District Headquarters.

(Continued on page ii)

4. WARNING FOR DRAFT

1. The u/n, warned on 24 Jan 44 for special draft, vide Part I Order No. 41 d/12 Feb 44 Para 4(a), was absent from final warning parade held at 0900 hrs 18 Feb 44 and was absent from final warning parade held at 1330 hrs 18 Feb 44 and was so absent when the draft departed:

L.18457 Cnr Ouellette, A.

(C.E.WEYMAN) Lieut, R.C.A.
A/Administrative Officer,
No. 1 Cdn Artillery Rft Unit.

N O T I C E S

1. TALKIE
A Picture "Mad About Music" will be shown at Sunshine Alley on Sunday 20 Feb 44 at 1430 hrs.

2. TALKIE - SERGEANTS' MESS
A Picture "Hit Parade 1943" will be shown at Sjts' Mess on Sunday 20 Feb 44 at 1930 hrs.

3. BINGO
"2" Bingo in St. Lucia Rooms at 1945 hrs Sunday 20 Feb 44.

4. NAAFI - CLOSING HOUR
The closing time at Naafi is 2125 hrs. No service will be given after this hour.

5. FOUND
One man's standard black enamelled bicycle. Owner may claim same at St. Lucia Guard Room.

6. HOTELS FOR OFFICERS

Montague Hotel, Montague Street, W.C.1. Museum 8446
Florence Hotel, Lancaster Gate, W.2 Paddington 1729
6-8 Clanricarde Gardens, W. Paddington 2976
Paddington Grand Hotel, Norfolk Square, W.2.

7. ROAD-WALKING
The Aldershot District Eight Miles Road Walking Race for smaller units will take place at Blackdown on 19 Feb 44, starting at 1500 hrs. Location of start and finish, reference map Aldershot Command 1 inch 363775 (First "B" in "Blackdown Barracks").

8. INTER-ALLIED SOCCER GAME, CHAMPIONSHIP SERIES.
The m/n game between Cdn Army and National Fire service, will be played at Aldershot Town Athletic Stadium, on Sat. 19 Feb 44 at 1500 hrs. Admission is at popular prices. Tickets may be purchased at the box office.

9. RUGBY FOOTBALL
ALDERSHOT SERVICES v ROYAL AIRCRAFT ESTABLISHMENT. This match will take place at the Command Central Ground, Queen's Ave, Aldershot, on Saturday 26 Feb 44. Kick-off 1500 hrs. Admission free.

Certified true copy of Pt. I Ord 50 d/19 Feb 44

C.E. Weyman Lt
A/ADMIN OFFICER
Officer having custody of original document

Notice to L-18457 Gnr Ouellette, A.

1 CARU

Notice is hereby given you pursuant to R.P.76 that it is the intention of the Prosecution to call

B-21371 Sjt Laxer, R.M.

as a witness at your FGCM and that such witness will give evidence as per the attached abstract of evidence.

(F.H. KELLY) Captain
Prosecuting Officer.

Received copy this

26.Feb 44

A Ouellette.

LIST OF WITNESSES

PROSECUTION:

Lt. D.E. Hill	No.1 Cdn Artillery Reinforcement Unit.
A.55356 Sjt Thompson, J.L.	No.1 Cdn Artillery Reinforcement Unit.
Lt. R.L.L. DuDomaine	No.1 Cdn Artillery Reinforcement Unit.
Capt. N.C. Fort	No.1 Cdn Artillery Reinforcement Unit.
B.21371 Sjt Laxer, R.M.	No.1 Cdn Artillery Reinforcement Unit.

LIST OF APPENDICES

Appendix "A" - No.1 C.A.R.U. Part I Order No.41 dated 10 Feb 44.

Appendix "B" - No.1 C.A.R.U. Part I Order No.50 dated 19 Feb 44.

STATEMENT OF ACCUSED IN ACCORDANCE WITH R.P. 14(B)

I, L.18457 Gunner Ouellette, A., of No.1 Canadian Artillery Reinforcement Unit, desire to have Lt. J.A. Nolan to represent me at my trial by Court Martial.

A. Ouellette

L.18457 Gnr. Ouellette, A.

187

Additional Witness in the case of: No. L18457
Gnr Alfred Ouellette.

B-21371 Sjt Laxer, R.M. will state: At 2120 hrs 18 Feb 44 L-18457 Gnr Ouellette, A. surrendered to me.

F.H. Kelley Capt
(F.H. Kelley) Capt RCA
Prosecuting Officer

21 Feb 44

This is to certify that I have today received a copy of Charge Sheet and Summary of Evidence for my trial by Court Martial.

A. Ouellette.

L.16457 Gnr. Ouellette, A.

SUMMARY OF EVIDENCE in the case of No L.18457 Gunner Alfred OUELLETTE, R.C.A., on strength of No.1 Canadian Artillery Reinforcement Unit, a soldier of the Canadian Army Overseas.

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

FIRST WITNESS for the prosecution

Lieut. D.E. Hill, R.C.A., on strength of No.1 Canadian Artillery Reinforcement Unit, having been duly sworn states:

As Mustering Officer, Records Office No.1 C.A.R.U. I called the roll of draft HENDLEY on Quebec Parade Square, No.1 C.A.R.U. at about 1700 hrs 18 Feb 44. Gnr. Ouellette did not answer to his name, which I called twice, nor did he come to the desk for his embarkation card.

The accused declines to cross-examine this witness.

Sgd: (D.E. Hill) Lieut. R.C.A.

SECOND WITNESS for the prosecution

A.55356 Sjt. Thompson, J.L. on strength of "H" Bty, No.1 Canadian Artillery Reinforcement Unit, having been duly sworn states:-

On 24 Jan 44 at about 1400 hrs I witnessed a parade at which men were warned for special duty, L.18457 Gnr. Ouellette, A. was present on that parade, and was warned with the others. The warning Officer stated that they were warned and detailed for special draft. That any unauthorized absence from the final parade, which would be held at a time and place to be notified later, would make the absentee liable to being charged with desertion, in which case the court would have the power to sentence the absentee to penal servitude for life. All present clearly heard the warning and I was satisfied that they understood it.

At 0900 hrs 18 Feb 44 a parade of the draft was called at which the time and place of the final parade were ordered and the warning regarding absentees was repeated. The final parade was ordered for 1630 hrs 18 Feb 44, and was so held. I was present at the 0900 hrs parade and the 1630 hrs parade on that day. Gnr. Ouellette did not answer to his name on either parade, and I was satisfied that he was not present. I know Gnr. Ouellette personally.

All parades for this draft were fallen in on the area beside the barrack blocks and from there they were marched to wherever they were required.

The accused declines to cross-examine this witness.

A.55356 Sjt. Thompson, J.L.

THIRD WITNESS for the prosecution

Lieut. R.L.L. duDomaine, Assistant Adjutant "C" Training Wing, No.1 Canadian Artillery Reinforcement Unit, having been duly sworn states:-

I present Part I Order No.41 dated 10 Feb 44 and certified by Lieut. C.E. Weyman. It is marked Appendix "A"

I present Part I Order No.50 dated 19 Feb 44 also certified by Lieut. C.E. Weyman and marked Appendix "B".

The accused declines to cross-examine this witness.

(R.L.L. duDomaine) Lieut. R.C.A.

FOURTH WITNESS for the prosecution

Capt. N.C. Fort, R.C.A., on strength of No.1 Canadian Artillery Reinforcement Unit, having been duly sworn states:

I was present on parade on 24 Jan 44 at about 1400 hrs when men were warned for special draft. L.18457 Gnr. Ouellette, A. was present on parade and I am satisfied that he heard and understood the warning which was as follows:

(1) You have been selected to proceed on a draft, and you are now warned that you must be present and ready to go when the draft is sent off.

(2) 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.

(3) If you are convicted of desertion the Court has the power to sentence you to a maximum sentence of penal servitude for life.

(4) At some time prior to the departure of the draft a parade will be called on which you must be present and at which the exact date and time of departure will be told to you.

This warning was carefully explained to all present and the seriousness of failure to be present at the time of departure particularly pointed out.

A parade of the draft was called for 0900 hrs 15 Feb 44 at which the warning was repeated and all present were ordered to parade at 1630 hrs 15 Feb 44 on Quebec parade square. Gnr. Ouellette was absent from both of these parades on 15 Feb and was absent without leave. He did not go with the draft.

The accused declines to cross-examine this witness.

N.C. Fort Capt
(N.C. Fort) Capt. R.C.A.

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 make a statement or give evidence on Oath and reserves his 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 Appendices "A" and "B" were duly received in evidence and are attached hereto.

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

F.H. Kelley Capt.
(F.H. Kelley) Capt. R.C.A.
Officer detailed to take the Summary of Evidence.

Bordon, Hants.,
21 February 1944.

M.F.M. 6
(A.F.B. 122)
40/P & S/136 (2637)

No. L18457 Name OUELLETTE, A. Sqn., Battery, or Company Corps R.C.A. Date of enlistment 4-3-41 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 fine N/A Sheet No. 1 Signature O.C. Company, etc. (R.O. Smith) Lt. 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
Field	16-10 1941.	Gnr		AWL from 2359 hrs 15-10-41 to 2300 hrs 16-10-41 (Absent 23 hrs 1 min) Held in open arrest.	Bdr Baugh Bdr Whitehead	96 hrs Detn.	18-10-1941.	LtCol J.W. G.Thompson	Ffts 5 days pay.
Field	30-10 1941.	Gnr		AWL from 2359 hrs 30-10-41 to 0700 hrs 31 Oct 41 AA Sec 15(1	L/Bdr Moore A.K. Bdr. Brooks, R.M.	7 days C.B. Ffts 1 days pay.	31-10-41	W.J. Tuchtis Major	
Field	13-1-1942.	Gnr		AA Sec 40.	L/Sjt Stanhope	10 days Ffts of pay.	2-2-42	LtCol J.W. G.Thompson	
Field	4-5-1942	Gnr		AWL from 0600 4-5-42 until 0905 hrs 4-5-42 A.A. Sec 15(1).	Sjt Fox J.L.	4 days C.B.	8-5-42	W.J. Tuchtis Major RCA	

(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	14-2-1943.	Gnr		AWL from 2300 hrs 14-2-43 to 1010 hrs 15 Feb 43. Sec 15(1).	L/Sjt Cannon R.J.	5 days C.B. Ffts 1 dys pay	16-2-43	R.K.MacKenzie Major RCA	
Field	1 Nov 1943.	Gnr		AWL from 0600 hrs 1 Nov 43 to 1500 hrs 1 Nov 43. Absent 9 hrs AA Sec 15(1)	Bdr MacNaull Documentary	2 days F.P. 2 days pay	2Nov43	H.G.S. Franks, Major	Total Ffts 3 days pay
Field	5 Feb 1944	Gnr		AA Sec 15(1) WOAS AWL from 2200 hrs 5 Feb 44 to 2030 hrs 7 Feb 44. Absent 1 day 22 hrs 30 mins	Sjt Barkwell Documentary	Ffts 14 dys pay.	8Feb44	E.M.D. Smith Major	Ffts 2 dys pay FR&I 149(1)(a) Ffts 14 dys pay FR&I 149(1)(b)

CERTIFIED TRUE COPY : OFFICER HAVING CUSTODY OF THE ORIGINAL DOCUMENT: L.B.Skinner 29 Feb 44

(L.B. Skinner) Capt. & Adjt.,
"Q" Training Wing, No.1 CARU.

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).
L.18457	Gunner	OUELLETTE, Alfred	No.1 C.A.R.U.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be referred to in 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 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	AA Sec 15(1)	6 times.
For	AA Sec 40	1 times.
For		times.
For		times.

Date of first entry in Field Conduct Sheet 16 Oct 41

Date of last entry in Field Conduct Sheet 5 Feb 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. ~~XXXX

42-110

P6 Ouellette A.J.

SCHEDULE.

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

Accused: D51146 Pte Ouellette A.

	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	Not Guilty	Not Guilty	WJR
2nd	"	Not Guilty	Guilty	WJR
3rd	"	Not Guilty	Not Guilty	WJR
4th	alternate	Not Guilty	Not Guilty	WJR
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.)

WJR At ~~present~~ under sentence fm~~-~~ 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 33 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 suffer field punishment for ninety days WJR
& to forfeit all ordinary pay for a period of ninety days.

(Sgd) ..... Feb 10-45 (Sgd) W. J. Ridge Maj.
Judge-Advocate, if any. Date awarded. 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 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 ordered to prison & be therein imprisoned until further order(s).~~ (1) Vic.

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

Date FEB 12 1945 (Sgd) Reserved L. Keane
Commanding ..... Confirming Officer. 4th Cdn Inf Bde

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

Accused.	Date.	Signature of Offr.
D51146 Pte Ouellette AJ 2 Cdn Reallocation Centre	14 Feb 45	A Gabriel Capt. Camp Commandant 2 Cdn Reallocation Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED 1 CAR Cpl

RECEIVED AT CMHQ IN AB 168 42-110

RECEIVED 26 FEB 1945 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3) W.F.C. 0.1608 (2804)

Convened by Order of Brig T.G. Gibson Comd 1 C.B.R.G. 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) 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.
D51146	PROCEEDINGS REVIEWED MAR - 6 1945	Albert Joseph	Ouellette	2 Cdn Reallocation Centre

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

PROCEEDINGS OF TRIAL.

WJR Held in the Fd in (country) Italy on (date) 9 10 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 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)

WJR 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.)

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

WJR 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

WJR ~~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	W. J. Ridge	C I C	2 C I B R Bn
Member	Lt	J. J. Hall	C I C WJR	2 C I B R Bn
Member	Capt	V. P. Aubut	C I C WJR	2nd Reallocation Centre
Judge-Advocate				
Prosecutor	Lt	C. V. Allen	R C O C	2nd Reallocation Centre
Defending Offr	Capt	W. P. Chadderton	R 22nd Regt	1 C I B R 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 (B) and fn 2 were not followed. See DI p 3.)

WJR A8. The accused D51146 Pte Ouellette A.J. before arraignment make(s) (no) (~~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 AB rank and name of the accused making the plea.)

WJR 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 1. 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.)

WJR 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.

N60

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.

WJR

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.

WJR.

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.)

WJR 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~~ WJR four .... 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 2nd & alternate .... charge(s), and allowed on the 1st & 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) WJR
(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 yes ....
(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 ~~1st~~ WJR 2nd .... charge~~(s)~~, being subject to confirmation, will be promulgated later.(1)
WJR *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 A and Ex B respectively.(3) WJR
(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 My defending offr will sir ....(2) WJR
(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(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.

THE ACCUSED ELECTS TRIAL BY COURT MARTIAL

CHARGE SHEET

The accused, No. D61146 Pte OUELLETTE, Albert Joseph, X-9 List No. 2 Canadian Re-Allocation Centre, 1 CBHQp., a soldier of the Canadian Army Overseas, is charged with:-

1ST CHARGE
~~AA SEC 9(2)~~

When on Active Service, disobeying a lawful command given by his superior officer

in that he

In the Field, in Italy, on 5 Jan 45, did not report to the Guard Room when ordered to do so by C10426 L/Bdr Hussey, A.J. of the Regimental Police of No. 2 Cdn Re-Allocation Centre.

2ND CHARGE
~~AA SEC 9(2)~~

When on Active Service, disobeying a lawful command given by his superior officer

in that he

In the Field, in Italy, on 6 Jan 45, did not appear on Commanding Officer's Orderly Room parade when ordered todo so by K23061 Sgt. Winder, R.A., acting CSM, 2 Cdn Re-Allocation Centre.

3RD CHARGE
~~AA SEC 9(2)~~

When on Active Service, disobeying a lawful command given by his superior officer

in that he

In the Field, in Italy, on 6 Jan 45, did not pack his kit and take it to the Guard Room when ordered to do so by B6879 L/Bdr Clark, R.E., of the Regimental Police of No.2 Cdn Re-Allocation Centre.

4TH CHARGE
ALTERNATE CHARGE
AA SEC 8(2)

When on Active Service, using insubordinate language to his superior officer

in that he

In the Field, in Italy, on 6 Jan 45, when ordered to pack his kit and take it to the Guard Room, by B6879 L/Bdr Clark, R. E., of the Regimental Police of No. 2 Cdn Re-Allocation Centre, did reply, "I am not going to pack my kit and take it to the Guard Room" or words to that effect.

C.P. Wilkinson Major

(C.P.Wilkinson) Major
OC 2 Cdn Re-Allocation Centre.

Field, Italy.
17 Jan 45.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
In Italy
30 Jan 45

T. G. Gibson

(T. G. GIBSON) Brigadier
Comd, 1 Cdn Base Rft Gp -CMF

w & R

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3) 40/P&S/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.
D51146	Pte		Albert Joseph	OUELLETTE	2 Cdn Realloc'n Centre

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) 30 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.

Major (Rank.) W J RIDGE (CIC) (Must be named. RP 106.) 2 CIBR Bn (Unit.)

MEMBERS.

Capt or Lieut to be detailed by the OC 2 Cdn Reallocation Centre

Capt or Lieut to be detailed by the OC 2 Cdn Inf Base Rft Bn (Rank.) (Named or detailed. RP 106.) (Unit.)

WAITING MEMBER.

Capt or Lieut to be detailed by the OC 2 Cdn Reallocation Centre (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 Italy (Country.)

T G Gibson (Signed personally. RP 105 fn 2.) (T. G. GIBSON) Brigadier (Rank.)

Date 5 Feb 45

Commanding 1 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

W3R

NO. 2 CANADIAN RE-ALLOCATION CENTRE - NO. 1 CANADIAN BASE RFT GROUP

9 Feb, 1945.
1330 hrs.

This is to certify that I have this date medically examined

D 51146 Pte Ouellette A.

and that he is fit. to undergo trial by Court Martial.

P. O'Leary Capt
Medical Officer.

WJR

NO. 2 CANADIAN RE-ALLOCATION CENTRE - NO. 1 CANADIAN BASE RFT GROUP

10 Feb, 1945.
0945 hrs.

This is to certify that I have this date medically examined

D51146 Pte Oullette, A.

and that he is fit. to undergo trial by Court Martial.

P C Heagy Capt
Medical Officer.

(1) WJR

1st witness for Prosecution

D21036 C.S.M. Phillips A. of #2 Reallocation Centre. sworn states — I am C.S.M of the company to which Pte. Oulette belongs. The accused in court is Pte. Oulette.

I am bb I was present of on the afternoon of 5 Jan 1945 at C.O's orders where the accused was awarded 7 days C.B. for punishment. The accused or escort was advised by me of the punishment which was seven days C.B.

Cross Examined by defending officer

I did ~~not~~ per Question. Did you advise the accused personally of the punishment?

Answer. No I did not. I advised the escort.

Question. Was the accused present?

Answer. - Yes.

Re. examination

Question. Whom was the escort that you handed the accused over to?

Answer. S/Bdr. Hussey.

no Quest by Court.

R. P. 83 (B) ff^d complied with

2nd witness for prosecution.

C10426 S/Bdr Hussey A. J. of #2 ~~reallo~~ Reallocation Centre. sworn states I am a l/cpl of the company to which Pte. Oulette belongs. The accused in court is Pte. Oulette. I was present on the afternoon of 5 Jan 1945 at C.O's orders as N.C.O. in charge of the parade. I received orders from the C.S.M that pte. Oulette was to report to the guard room at 1800 hrs for a period of 7 days C.B. On the

night of 5 Jan 1945 (2) the accused did not report to the guard room at 1800 hrs 5 Jan 1945 nor between 1800 hrs 5 Jan 1945 and 0800 hrs 6 Jan 1945.

Cross examined by defending officer

Question - What did the C.S.M tell you after C.O's orders?

Answer - He told me to tell the accused to report to the guard room at 1800 hrs 5 Jan 1945.

Question - How do you know pte. Oulette didn't report to the guard room all evening?

Answer - I know because I was present in the guard room all evening.

No Re examn. R.P. 83 (B)/(B) complied with
no Queen by Court

3rd witness for the prosecution

F 77212 L/Cpl Stevens T.R. of #2 Reallocation centre sworn states. I recognise the accused in pte Oulette in court. I was duty N.C.O in the guard room of #2 Re allocation centre. The accused did not report to me for fatigue on the night of 5 Jan 1945. I was advised that the accused was to report for duty. In the morning morning I made a report out and turned it into the company orderly room at 0800 hrs 6 Jan 45.

Cross examined by defending officer

Question. Was there any other N.C.O. on duty in the guard room on the night of 5 Jan at 1800 hrs until 0800 hrs the following morning?

Answer. - I was the only N.C.O. on duty

Re-examined by prosecution

Question - Were there any other N.C.O's in the guard room between 1800 hrs 5 Jan 1945 and 0800 hrs 6 Jan 1945.

Answer - Yes.

Jones
By Court.

Question - Can you tell me what these other N.C.O.s were doing in the guard room?

Answer - They sleep there in the guard room.

Question - R.P. 83(B)/11 complied with

4th witness for prosecution.

K 23061 Sgt. Winder R.A. of #2 Dislocation Centre. Sworn states - I recognise the accused Pte. Outlette in court. I was acting sergent major at X 9. on 8 Jan 1945. I saw the accused that day at approx 1430 hrs 8 Jan 1945 and instructed him to correct his dress and appear at C.O's orders. at I told him that C.O's orders would be on or after 1430 hrs 8 Jan 1945. He was not present when called for orders.

Cross-examined by Defending Officer.

Question - At what time C.O's orders were held on 8 Jan 1945?

Answer - They started at approximately a quarter to three

Question. When you warned the accused for orders had orders started?

Answer - No.

Question. What time did you tell the accused to be present?

Answer. I told him to be present at 1430 and remain there.

Question - Were you there at 1430 hrs?

Answer - yes.

Question - Can you tell me exactly what you told the accused.

Answer - I told the accused to adjust his tunic

and to appear at the (4) sergeant majors office by 1430 hrs. and that orders would be held at 1430 hrs or after

Question - What time are orders usually held there?

Answer - It varies - they are usually held at three o'clock.

Question - does the man coming up for orders report to anyone?

Answer - yes he reports to the sergeant major

Question - who was the sergeant major on the 8 Jan 1945?

Answer - I was acting sergeant major

Question - did you tell the accused to report to you?

Answer - no I didn't.

Question - How was anybody to know that you were sergeant major on 8 Jan 1945

~~Answer~~ - ~~I did~~

Answer - I ~~did~~ handled the parade all day

Re examined by prosecution

Question - Did you advise the accused that you were acting sergeant major?

Answer - no

Question - did you advise the accused to report to the sergeant major or to the sergeant major's office?

Answer - I warned the accused to report to the sergeant majors office

Questioned by the court

Question - Do you know how long Pte. Oulette had been in the camp?

Answer - No.

Question - Will you describe the sergeant major's office?

Answer - The C.S. M's office is beside the gate, in the first building on the left. On the second floor.

Question - Do people usually have trouble in finding the C.S. M's office?

Answer - I can't state for certain but as far as I know they don't

R.P. 82 (6)(D) HH complied with

5th witness for prosecution.

F29600 Sgt. Canning E.H. of #2 Reallocation Centre sworn states. I recognise the accused pte Oulette. On the 8 Jan 1945 I was company orderly sergeant. Sgt. Winder was acting C.S.M. on that day. I was present when Sgt Winder was speaking to the accused on the steps leading from the orderly room at approx 1415 hrs. on 8 Jan 1945. The accused was warned for C.O's orders.

No cross exam.

Questioned by the court.

Question - Do you remember at what time the accused was warned to be present?

Answer - He was warned to be there at 1430 and that orders were to be held at 1430 hrs or after.

RP. 83 (6)(13) HH complied with

6th witness for the prosecution

B6819 Sgt. Bdr. Clark R.E of #2 Reallocation Centre sworn states - I recognise the accused Sgt pte Oulette. I was present at C.O's orders of 8 Jan 1945 at 1430 hrs until about 15:00 hrs. The accused was not present on

that parade. My instructions were to apprehend the accused as early as possible after the parade was over. I apprehended him that day at approx 2315 hrs 8 Jan 1945. The accused at that time was in bed. My instruction ~~was~~ which I gave to the accused were ~~that according to Sgt. Winders orders he was to be placed under close arrest and put in the guard room. Did the accused comply~~ to get out of bed, pack his kit and report with me to the guard room. The accused complied to the extent of getting out of bed but he refused to pack his kit and take it with me him. I then ordered him again to pack his kit. He replied that he was not going to take his kit to the guard room with him. Approximately 10 minutes elapsed between my first and second order to pack his kit. During that time the accused made no attempt to pack his kit. I then escorted the accused to the guard room.

Cross examined by defending officer

Question - Did you give the accused any length of time to comply with your order of packing his kit?

Answer - yes I did

Question - how long?

Answer - one minute

Question - what did you do after 30 secs?

Answer - after 30 secs I asked him if he was going to comply with the order to pack his kit. He replied "no I'm not."

Question - If you gave this man a minute to pack his kit why did you ask him again after 30 secs?

Answer - Considering the time of night it was and that I was tired and wanted to go to bed and that I was disgusted with the whole proceedings

WJR

(1)

Question - When you woke up the accused did you have any words with him?

Answer - None except to instruct him what to do.

Question - How did you wake the accused?

Answer - I shook him by the shoulder. I did not shake him out of bed.

Question - Did the accused ask you why he had been awakened?

Answer - Yes.

Question - What did you tell him?

Answer - I told him that the sergeant ~~he~~ winder had instructed me to place him under close arrest.

Question - Did the accused ask you again why he was being placed under close arrest by Sgt ~~[illegible]~~ Winder acting C.S.M.?

Answer - No he did not.

Question - Did you know why the accused was being placed under close arrest?

Answer - Yes.

Question - Could Why didnt you tell him if you knew?

Answer - I didnt think it was necessary. I was only following my orders.

Question - Did you shove or kick the accused at all?

Answer - No sir.

Question - How long have you been a lance bombadier?

Answer - Since Dec 13 1944.

Re examined by Prosecutor

Question - Did you give the accused 60 secs to pack his kit or to start to pack his kit?

Answer - I gave him 60 secs to start to pack it.

No Cont by Court. R.P. 83 (B) HH complied with

(8)

7th witness for prosecution

F89243 Pte Mulholland J. of #2 Re allocation centre sworn states — I recognise Pte Oulette, the accused. On the night of 8 Jan 1945 at approx 23.15 hrs L/Bdr Clark as told me to accompany him to pack up the accused. I did so and L/Bdr Clark and myself found the accused sleeping in his bunk. ~~The accused accompanied us back to the guard room but not at once~~ Bdr Clark awakened the accused to and told him to get dressed pack his kit and accompany us to the guard room under orders from the acting C.S.M. The accused replied that he would not take his kit. After the accused was dressed Bdr Clark gave him a direct order to pack his kit. Bdr Clark told him he had one minute to comply with the order. ~~Bdr Clark gave and that his kit was to he was to pack his kit~~

Question - Did L/Bdr Clark tell the accused that he had one minute to pack his kit or to start to pack his kit?

Answer - Bdr. Clark told him that the time was to pack his kit

The accused replied that he would not pack his kit. We then escorted the accused to the guard room

Cross examined by defending officer

Question - How did L/Bdr Clark awaken the accused?

Answer - He went over and shook him with his hand

Question - Did the accused ~~say~~ ask L/Bdr Clark why he was being placed under closed arrest

Answer - Yes and he was told ~~that~~ by L/Bdr Clark that he was acting under orders of the acting C.S.M.

Question

(9)

Question - Did L/Bdr Clark take out his watch when he gave the accused one minute to pack his kit

Answer - yes.

Question - Did he give him a minute?

Answer - No he gave him 30 secs

Ie

Ice Re examined by Bosecuilar

Question - In that 30 secs did the accused make any attempt to pack his kit

Answer - No. R. P. 83 (13) 1/H complied with

No Quest by Court

Court adjourned at 1700 hrs 9 Feb 45

Court reopens 0940 hrs. 10 Feb 45 The same members being present

In accordance with record form D (04) Motion by Defending Offr

In connection with Charge 1. the accused is charged with disobeying a lawful command. If the court looks at the evidence already given with regard charge 1 they will find that no evidence has been brought to show that any disobedience was done. C.S.M. Phillips in his evidence did not tell pte Oulette that he had 7 days C.B. He told L/Bdr Hussey. L/Bdr Hussey did not tell pte Oulette. There is only one man who could have told him that and he has not appeared in this court. According to Army Act 9. (2) Pge 34. No superior officer gave this command according to the evidence Def. footnote. Pge 17. Sec 11. I can't understand why this man was charged

W.S.R.

(10)

under this section. The next witness
Lt Cpt Stevens says the man did not appear
on fatigues but so far no one has come forward
to show that this man should be on fatigues.
Under the laws of evidence someone should have
come here and be able to say that pte Oulette
was C.B. The summary of evidence cannot
be used but only evidence of witnesses and
in checking the evidence there is quite a
variation. Therefore I feel that the accused
should be dismissed of this charge. Ref
Pge 71 A.A. sec 8, also question of burden
of proof pge 72 sec 12. also on pge
73 sec 15 notes 1, 2, 3, 4. There is no
proof that the sgt, the corporal or the
other ~~can~~ Lt Cpt have brought that ~~[illegible]~~ evidence
in.

& Charge

In ref. to second charge which was supposed
to have happened 3 days later. The accused
is supposed to have been warned to appear
on the C.O's orders ~~[illegible]~~ to be held at
14 30 hrs or after or thereabouts. Ref Pg 17 sec 11
latter part on pge 18. The evidence is not quite
clear as to whether the accused was told
to be on the C.O's orders or if he was to
appear at the C.S.M's office. We have
again a variation between Sgt Winders
evidence and Sgt. Cannings evidence as
to where Pte Oulette was to appear on the
8 Jan on orders. Sgt Winder said that
he told him in his office. Sgt Canning
said on the steps outside. The time is not
quite clear. If pte Oulette had gone to orders at
15 00 hrs or 15 30 hrs he would still not have
disobeyed a command. Ref again pg 43 & footnotes
(2). There has been no wilful defence of orders
shown in charge. Also question of time. The
accused might be A.W.L. from C.O's parade
but that is not the charge that he's charged

WJR

(9)

with. He's charged with disobeying an order because but he could not disobey this order as the time for him to be present is not quite clear. Ref see pinnate, pg 434
It is also in M. M. S. that a man if he forgot to turn out on that parade he could still not be charged under that section.

Charge III.

According to evidence given L/Bdr Clark gave the accused one minute to pack his kit or to start packing his kit. After 30 secs he escorted him off to the guard room. Ref pg 17 sec 11 pg 18 third line ie if Why L/Bdr Clark after 30 secs changed his mind I do not know. The accused should have been given his full minute to start packing his kit. Again the evidence is not quite clear whether it was a minute to get kit packed or to start packing it. If it was a minute to pack his kit its physically impossible to do it. Therefore command was not lawful. If he gave him a minute to start packing his kit L/Bdr Clark should have given a full minute to comply with the order to start packing his kit and then escorted him to guard room. This he did not do

Alternative Charge

Reference to superior officer sec 3 pg 433. The according to the evidence yesterday L/Bdr Clark had been made a L/Bdr on 13 Dec. A lance bdr is not a superior officer. Pg 433 sec 5. In this case the accused could not be aware that this man was a superior officer. This happened approximately approx 3 weeks after man had been promoted to rank of L/Bdr. From the evidence given by this man there seems to have been a slight bit of provocation. Is it fair to make a man up at 23.15 hrs at night, sound asleep and tell him that he is under close arrest, yet when the man asks why he is under close arrest L/Bdr Clark knew the reason

but would not tell him because he was [illegible] and fed up as he admitted in court yesterday. Any man at that time of night would naturally want to know why he must go to the guard room. Especially an N.C.O. whom he did not know.

In closing I would take the court to take into consideration the various section cited in connection with the 1st, 2nd, 3rd alternative charge and compare it with the evidence given yesterday (P.T.O.B.)

Prosecution

In the evidence given yesterday it was proven that C.S.M. Phillips advised L/Dr. Hussey that the accused had received a punishment of 7 day C.B. in the presence of the accused. L/Dr. Hussey then warned the accused to appear at the guard room at 1800 hrs on that date. Further evidence by L/Dr. Hussey and L/Cpl. Stevens substantiate the fact that the accused did not appear at the guard room or any time during that night. In regard to the second charge it has been substantiated by Sgt. Wender and Sgt. Canning that the accused was warned to appear for C.O.'s orders at a specified place and at a specified time and at a later hour when called for orders was not to be found at the place specified.

3rd charge.

It has been stated by the defense that it is physically impossible to pack a kit in one minute. This is strictly a matter of opinion depending on the extent to which further packing is needed. However it has been substantiated that the accused was first told to pack his kit, to which he refused and after making no attempt to do so after a direct order was given a second opportunity

To comply this he did not do

9th & alternative charge

The defense has stated that L/Bdr Clark was not a superior officer. A L/Bdr is appointed an N.C.O. in accordance with routine order 4668 to carry out the duties of an N.C.O. while so employed and therefore must be considered as a superior officer. The fact that L/Bdr Clark had only carried his appointment for a matter of 3 weeks has no bearing whatever. No evidence has been brought forth that the accused did not recognise Bdr. Clark as an N.C.O.

Defending offr did not reply.

D6 Evidence by accused in accordance with D.S.I. Pte Oulette A.J. sworn state

I am D 51146 Pte Oulette A.J. on strength of X 9 test. On 8 Jan 1945 I was warned by Sgt Winder in the Sgt. Majors office that I must remain there to attend C.O's orders which shall be held around 1430 hrs. At this time it was approximately 1415 hrs so I waited there until approximately 1455 hrs and then I asked a clerk that was there if I had time to go and attend pay parade. He told me yes because orders are usually around 1600 hrs. I was gone about 15 or 20 minutes and I came back to C.S.M's office and waited until 1600 hrs and then I enquired again about C.O's orders. I was told that they were already done so I enquired for the sarjeant major and was told he was not there or anywhere around the camp so I proceeded back to my quarters and the day after which was 9 Jan I at about 2300 hrs I was awakened from my bank and ~~it was~~ I think L/Bdr Clark was shaking me with his boots so I did object to having his boots on my blanket and asked him what did he want He answered me "You will know it soon"

enough and he was very sarcastic at the time and told me in the same manner to pack my bed and follow him to the guard room. After that I asked him why should I go to the guard room and he told me that it was by order of the C.S.M. I asked him what the charge was and he told me I would find out soon enough. While I was tying my blanket he ordered me to pack my kit on well. After a while just as I was finishing with my blanket he pulled out his watch and gave me one minute to get my kit packed so I pointed out to him that it was an impossibility and I could not do it so he looked again at his watch and told me to pick up my blankets and escorted me to the guard room. Once in the guard room I asked to see the orderly officer and he answered me that I would see him when he came around. The lance corporal when questioned by Defending officer he came to question ~~when~~ the 2/Cpt wake me up was not drunk but he had been drinking. I have known 2/Bdr Clark for 6 mths and during that time we knew him as a private acting as a 2/Bdr. I didn't pack my kit because he I told him that it was an impossibility to pack my kit within that time ~~and [illegible]~~ ~~of the manner in which he [illegible]~~. and then they escorted me to the guard room

~~[illegible]~~

Question Questioned by Prosecutor

Did Sgt. Wender warn you for C.O's orders

Answer - Yes.

Question - Did you receive Sgt. Wender's permission to leave C.S.M.'s office

Answer - NO.

Question - Did you report to any N.C.O. on your return from pay parade

Answer - No there was nobody there

Question - Did you make an attempt to find any N.C.O.

Answer - I did attempt to find C.S.M. Phillips

Question - Did you make an attempt to find Sgt. Wender

Answer - No because I knew that C.S.M. Phillips was in charge of C.O's orders and that he was the one I was supposed to report to.

Question - When you were ordered to pack your kit did you make any attempt to pack it

Answer - No sir I was busy with my blanket

Question - Did you ~~agh~~ ~~for~~ tried to pack your kit.

Answer - ~~No sir~~
No Re exam.

Questioned by the court

Question - were there any people on pay parade and did you get payed

Answer - yes about 20. I was payed (evidence produced in pay book.)

Question - was there anybody left in charge of the C.S.M's office?

Answer - nobody

Question - did he ~~[illegible]~~ tell you to remain there

Answer - he didn't.

Question - were you at the C.S.M's office at 1430.

Answer - yes.

R.P. 83 (B/11) complied with

2nd Witness for Defence. Character witness (18)

WJR

Capt Charleton W.P. sworn states I have known the accused since July 41 at which time he was in my platoon in England. I cannot recall of having had any serious difficulties with this man in my platoon during the time in which he was under my command which was some 8 mths. He was again under my command in April 43 up to the end of July 45 when he was evacuated in Sicily toward of a broken foot. In action he proved to be a very fine soldier.

No cross exam.

R.P. 85(B)(1)(A) complied with

Prosecutor makes no address. Summary by he

Closing address by Defending officer

From the evidence given by the accused you will see that it was not quite clear he should be on the C.O.'s orders and on Pge 434 Part. Misapprehension or omission cannot come under sec 92. I feel the accused should have been charged with absence from that parade. Regarding the alternative charge I feel that the accused could hardly be insubordinate when he was given an order which was not a lawful order. Under sec 40. he might be guilty but not under sec 82. I feel Clark admits he was tired and fed up with the whole proceedings. That is not an excuse from N.C.O. to be hasty. It further shows that he was de unhappy about carrying out this order which to my mind leaves a great field open for all kinds of things to happen.

E3. Plea of Mitigation of Punishment WJR E3.

I would like the court to take into consideration in their sentence the length of time in which the accused has been under close arrest & dump and next the accused's record of service since he left Canada in Dec 1959. He is now category for his eyes being on E3 through no fault of his own. If he was fit he would be quite willing to serve with his unit as he has done in the past. His record in the field was the best and this man has not been going awl. or been going away.

4 - A.W.S.R.

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 61146	Pte	Ouellette, A.,	No. 2 Cdn Re-allocation Centre.

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 AA SEC 15(1) ..... 7 ..... times.

For AA SEC 11 ..... 1 ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 3 March 1940

Date of last entry in Field Conduct Sheet 5 Jan 1945

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. If 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 ~~X~~ 33 A.W.S.R. days in military custody, *i.e.*, Nil days in open arrest, ~~X~~ 33 A.W.S.R. days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 26 years, 346 days

6. The date of his attestation ~~enlistment for military service~~ is 1 Nov 1939

7. The service which the accused is allowed to reckon is 5 years, 78 days

8. The accused is in possession of GVSM 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	N/A
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.*

DPSS. UDF. ME.—4143/44—4,000—217/UDF/5

ex - B - WJR

No D51146 Name OUELLETTE,AJM | Sqn, Battery, or Company | Corps CIC | Date of enlistment 2-10-39 | CC Badge | Service or Proficiency Pay $1.50 | 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

MFM 6

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (Proceedings with 16d)	By whom awarded	Remarks
						Forf 1 days pay	3- 3-40	O.C. R22R	
England		Pte				7 days CB	15- 9-41	OC CIHU	For
England		Pte		AA 15(1) AWL 1 day, 16 hrs		3 days CB	25- 9-41	OC CIHU	
England		Pte		AA 15(1) AWL 18 hrs, 30 mins		Forf 1 days pay	5- 5-42	OC R22R	
England		Pte				Forf 3 days pay	24- 7-42	OC R22R	
England		Pte				Forf 3 days pay	2-12-42	OC R22R	
England		Pte				27 days detn			
England		Pte		AA 15(1) AWL		Forf 27 days pay	23-12-42	OC R22R	
						Forf 3 days pay	24- 2-43	OC R22R	
England		Pte		AA 15(1) AWL		Forf 23 days pay	8- 3-43	OC R22R	
						28 days FP			
England		Pte				Forf 28 days pay	29- 3-43	OC R22R	
England		Pte		AA 15(1) AWL		Forf 1 days pay	28- 9-43	OC 3 Bn	
						Forf 10 days pay	22- 6-45		
Field		Pte		AA 15(1) AWL					
Field		Pte							

(FTO)

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
						14 days FP		OC X9 list	
		Pte		AA 11		14 days pay	22- 6-44		
		Pte		AA 15(1) AWL 4 Hr.,30 mins.		7 days CB	5- 1-45	OC X9 list	

Certified true copy of MFM 6

(J.A.Balcom) Capt & Adjt.
No. 2 Cdn Re-Allocation Centre.

WJR

CERTIFICATE RE DEFENCE

I, D51146, Pte Ouellette, A., request Capt. CHARLEBOIS, R22R (3 Pen) to appoint an officer to be my Defending Officer at my pending Trial by Court Martial, if available.

A. Ouellette
(D51146, Pte A Oullette)

RECEIPT FOR DOCUMENT

Received, from the Adjutant No. 2 Canadian Re-Allocation Centre, 1 CBRGp., one copy of Summary of Evidence.

A. Ouellette
D51146, A. Ouellette, Pte)

DJR

LIST OF WITNESSES

FOR THE PROSECUTION: D21036, CSM PHILLIPS, A. - No. 2 Cdn Re-Allocation Centre.

C10426, L/Bdr Hussey, A.J. - No. 2 Cdn Re-Allocation Centre.

F77212, L/Cpl Stevens, T.R.- No. 2 Cdn Re-Allocation Centre.

K23061, Sgt Winder, R.A. - No. 2 Cdn Re-Allocation Centre.

F29600, Sgt.Canning, E.H. - No. 2 Cdn Re-Allocation Centre.

B6879, L/Bdr Clark, R.E. - No. 2 Cdn RE-Allocation Centre.

F89243, Pte Mulholland, J. - No. 2 Cdn Re-Allocation Centre.

FOR THE DEFENCE:

NIL

ex - C-WSR

SUMMARY OF EVIDENCE

in the case of

D-51146 Pte Ouellette, Albert Joseph, a soldier of the Canadian Army in Italy, Canadian Army Overseas, on strength of NX List, 2 Canadian Re-Allocation Centre, 1 CBRGp.

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

1ST WITNESS FOR THE PROSECUTION

D-21036, CSM Phillips, A, CSM at No 2 Canadian Re-Allocation Centre, No. 1 CBRGp, having been duly sworn, states:-

"On the afternoon of January 5th, 1945, after CO's orders, I again told Pte Ouellette that he had been awarded 7 days C.B. He had been told just previously by the CO in my presence that he was sentenced to 7 days C.B. I then told L/Bdr Hussey to take him away".

A Phillips CSM

(A. Phillips) CSM
No 2 Cdn Re-Allocation Centre.

The accused declines to cross-examine the witness

2ND WITNESS FOR THE PROSECUTION

C-10426, L/Bdr Hussey, A.J., Regimental Police at No 2 Canadian Re-Allocation Centre, 1 CBRGp, having been duly sworn, states:-

"After the C.O's orders, on the afternoon of January 5, 1945, the CSM handed the orderly room parade over to me, and gave instructions that Pte Ouellette was sentenced to 7 days C.B. I ordered Pte Ouellette to report to the Guard Room at 1800 hrs that day. He did not report at 1800 hrs or at any time during the night."

A J Hussey

(A.J. Hussey) L/Bdr
No 2 Cdn Re-Allocation Centre.

The accused declines to cross-examine the witness.

3RD WITNESS FOR THE PROSECUTION

F-77212, L/Cpl Stevens, T.R., a provost of No 2 Canadian Re-Allocation Centre, 1 CBRGp, having been duly sworn, states:-

"On the 5th January, 1945, I was in charge of the Guard Room at No 2 Canadian Re-Allocation Centre where Pte Ouellette was to report for fatigue from 1800 hrs to 2100 hrs that night. He failed to report and he was marked AWL. This information was passed to his Company Office."

T R Stevens

(T.R. Stevens) L/Cpl
No 2 Cdn Re-Allocation Centre.

The accused declines to cross-examine the witness.

4TH WITNESS FOR THE PROSECUTION

R23061, Sgt Winder, R.A., platoon Sergeant at No 2 Canadian Re-Allocation Centre, 1 CBRCp, having been duly sworn, states:-

"On the 8th Jan 1945, I was acting CSM and at approximately 1415 hrs informed D51146 Pte Ouellette, A that he was on charge and would attend C.O's orders. I warned him to appear properly dressed at the office of the CSM in the Battalion Orderly Room and to wait there until he was called at approximately 1500 hrs. He was called and failed to answer."

R.A. Winder, Sgt
No 2 Cdn Re-Allocation Centre.

The accused declines to cross-examine the witness.

5TH WITNESS FOR THE PROSECUTION

F29600, Sgt Canning, E.H., Company Orderly Sergeant of No 2 Cdn Re-Allocation Centre, 1 CBRCp, having been duly sworn, states:-

"At approximately 1415 hrs, 8 Jan 1945, I was present when acting CSM Winder warned Pte Ouellette for C.O's orders."

E.H. Canning, Sgt.
No 2 Cdn Re-Allocation Centre.

The accused declines to cross-examine the witness.

6TH WITNESS FOR THE PROSECUTION.

B6679, L/Bdr Clark, R.E., in charge of the Guard Room at No 2 Cdn Re-Allocation Centre, 1 CBRCp, having been duly sworn, states:-

"I attended the C.O's orderly room parade at about 1500 hrs on 8 Jan 45. The accused whom I recognize was not present at any time during that parade on 8 Jan 45. I was instructed to apprehend the accused. I checked the accused's quarters several times from approx 1545 hrs onward and finally at 2315 hrs, 8 Jan 45 found him in bed. I woke him and informed him that he was under close arrest by orders of the Acting CSM. He got up and dressed and I asked him to pack his kit and bring it to the Guard Room with him. His answer was "I am not taking my kit to the Guard Room". Then I gave him a direct order to pack his kit and gave him 60 seconds to get started. On the 30th second I asked him whether his answer was 'yes' or 'no'. He replied "I am not", so I immediately escorted him to the Guard Room and placed him under close arrest."

R.E. Clark, L/Bdr
No 2 Cdn Re-Allocation Centre

The accused declines to cross-examine the witness.

7TH WITNESS FOR THE PROSECUTION

F99243 Pte Mulholland, J., a provost of No. 2 Canadian RE-Allocation Centre, 1 CBRGp., having been duly sworn, states:-

"At approximately 2315 hrs 8 Jan 1945, I was told by L/Bdr Clark to accompany him to the quarters of D61146, Pte Ouellette, A. We went and found him asleep. Bdr Clark awakened Pte Ouellette and told him to get dressed and pack his kit, that he was under close arrest by orders of the Acting CSM. Pte Ouellette replied, "I am not taking my kit to the Guard Room", so Bdr Clark took out his watch and gave him a minute to start carrying out the order. At approximately a half minute, Bdr Clark asked if the answer was 'yes' or 'no' to the order. Pte Ouellette said, "I am not taking my kit to the Guard Room". We then escorted him to the Guard Room and he was placed under close arrest."

J. Mulholland

J.Mulholland, Pte
No. 2 Cdn Re-Allocation Centre.

The accused declines to cross-examine the witness.

The accused was cautioned as follows:-

"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."

The accused reserves his defence.

I hereby certify that R.P. 4(c)(d)(e)(f) [redacted]) have been complied with.

A.D.Atkins

In the Field, Italy
11 Jan, 1945.

A.D.Atkins, Lieut,
Officer taking Summary.

TT-66 (AFRICA)

PTE OUELLETTE A.J.M.

Correspondence to be PINNED here.

D51146, Pte. Ouellette, A.J.M.,
1 Bn., 1 Cdn Base Rft Depot.

B27

TT66

Army Form A.3.

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

PROCEEDINGS.

A.

On Active Service, this thirteenth day of October, 19 43. (Order convening the Court.)

Whereas it appears to me, the undersigned, an officer in Command of 1 Canadian Base Reinforcement Depot, 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]

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	J. Blair,	RCE, 3 Bn., 1 C.B.R.D.

Members.

Rank.	Name.	Regiment.
Captain	R. F. S. Robertson,	PPCLI, 2 Bn., 1 C.B.R.D.
Captain	A. F. Mitchell,	RCR, 2 Bn., 1 C.B.R.D.

*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.

Sig. [signature] Colonel
Commanding 1 Cdn Base Reinforcement Depot
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*)
D51146, Pte. Ouellette, A.J.M. 1 Bn., 1 CERD.	FIRST CHARGE AA Sec 9(2)	Not Guilty Not Guilty		
	FOR FULL DETAILS OF CHARGE SEE CHARGE SHEET.		15 Oct 43 see	

*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 Dy.

(Signed) G Rodney Barker Colonel
Commandant, 1 Can Base Reinforcement Depot
Convening Officer (*e*)

(Signed) J B Lamont Major
RCE 3 Bn 1 CERD
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 15 day of Oct 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 15 day of Oct 1943

J B Lamont Major
President of the Court Martial.
RCE 3 Bn 1 CERD.

C. Certificate in case of death sentences.

*See footnote (*f*) 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 day of 19 .

Confirming Officer.

Promulgated and extracts taken in the case of

(*a*) (Dated) (Signed)

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.

(23674) W1-46179/8507 (60,000) 2/43 A & E.W.Ltd. Gp.4/95
(24264) W1-11192/71 100,000 3-43 " "

JAG BRANCH - [illegible]

Accused

D51146 Pte. Ouellette A.J.M.

1 Bn. 1. C.B.R.D.

Remarks	Date
Trial in (Country) N. A.	15 Oct. 43.
Charges AA 9 (2)	
Sentence Not Guilty.	
Rec'd from CR at JAG Branch	9 Nov.
To DW for (~~pre~~)(post) rev	9 Nov.
Recommendations by [illegible]	
(1) Pass and record	
(2) ~~Ltr on irregularities~~	
(3) ~~Quash~~ charge(s)	
(4)	
Ret'd to JAG Rev 1 by [illegible]	9 nov.
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	
	9. Nov.
Instrs completed by	

JAG BRANCH [illegible]

Accused

D51146 Pte. Ouellette A.J.M.

1 Bn. 1. C.B.R.D.

Remarks	Date
Trial in (Country) N.A.	15 Oct. 43.
Charges AA 9 (2)	
Sentence Not Guilty.	
Rec'd from CR at JAG Branch	9 Nov.
To DW for ~~(pre)~~ (post) rev	9 Nov.
Recommendations by [illegible]	
(1) Pass and record	
(2) ~~Ltr on irregularities~~	
(3) ~~Quash~~ charge(s)	
(4)	
Ret'd to JAG Rev 1 by [illegible]	9 nov.
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.	9. Nov.
Instrs completed by	

15 Oct 43.

I hereby vary the order made by me convening a Field General Court Martial for the trial of D51146, Pte. Ouellette, A.J.M. dated 13 Oct 43 by detailing Capt. J. E. Harry, 2 Bn., 1 CBRD as a member of the Court in place of Capt. R.F.W. Robertson, RCR, 2 Bn., 1 C.B.R.D.

G. Hedley Basher

(G. Hedley Basher) Colonel,
Commandant, 1 Cdn Base Rft Depot.

~~The~~ accused elects trial by Field General Court Martial

8

CHARGE SHEET

D-51146 Pte Albert Joseph Merule Ouelette, on the strength of "C" Company, I Battalion, I Canadian Base Reinforcement Depot, a soldier of the Canadian army Overseas is charged with:

FIRST CHARGE
A.A. SEC. 4(2)

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

in that he,

in the Field at approximately 1600 hrs on 1 Oct 43, when ordered by E-42418 A/Cpl. Morin, R. to hand in his M.B.M. Part II (paybook) did not do so.

In the Field
11 Oct 43

(W.P.Bristowe) Lt.col.
Commanding I Bn ICBRD

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

30 Oct 43. Colonel
Commandant I Cdn Base Reinforcement Depot

MEDICAL CERTIFICATE
R.R. (CAN) 557

I CERTIFY THAT I HAVE THIS MORNING EXAMINED NO D-51146.

RANK P6 NAME Ouellette A.

OF 1 BATTALION, 1 CDN BASE RET DEPOT. AND IN MY OPINION

HE IS FIT TO UNDERGO TRIAL BY COURT MARTIAL.

STATION In Ile-Field.

DATE 15-Oct 43

Capt (RCAMC)
MEDICAL OFFICER 1 BN 1 CBRD

Accused D5146 Pte A.J.M. Ouellette JR 1 BN 1 CBRD
(Number) (Rank) (Christian Names) (Surnames) (Unit)

Held in the Field in Italy (Country) on 15 October 1943. (Date)

	Rank	Name	Unit
PRESIDENT	Major	J. Blair	3 Bn 1 CBRD
MEMBERS	Capt	A.F. Mitchell	2 Bn 1 CBRD
	Capt	J.E. Harry	2 Bn 1 CBRD
JUDGE ADVOCATE (if any)			
OFFICERS UNDER INSTRUCTION:		Nil	

PROSECUTING OFFICER Major M.G. Clermont 1 Bn 1 CBRD Lawyer? Ans. No sir.

DEFENDING OFFICER Lieut P.P.E. LaRochelle 1 Bn 1 CBRD Lawyer? Ans. No sir.

(The following procedure must be actually carried out)

The President produced the Convening Order, Charge Sheet(s) and Summary of Evidence. (Rs P 17(E), 22(a)).

The President, in closed court (R.P.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 (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 1345 hours, the trial commences.

The Prosecuting Officer produces a Medical Certificate under K.R. (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 the Accused: Do you object to DG277 Sgt Lafontaine, B. 1 Bn 1 CBRD as interpreter? No sir

~~Do you object to _____ as interpreter? Answer _____~~

~~The interpreter is duly sworn.~~

~~The interpreter is duly sworn~~

~~Do you object to _____ 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 (R.P.10

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

The President, Members, Judge Advocate and Officers under Instruction are duly sworn (R.P.26-27 (Forms of Oath on Page "D"))

(PTO)

The Charge Sheet(~~s~~) is (~~are~~) initialled by the President.

The Prosecuting Officer informs the Court that the accused has(~~have not~~) elected trial by Court Martial (A.A. 46(8)).

(If special plea(s) is (are) made for separate trial on one or more charges (Rs 62(E), 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 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 (R.P.112) He pleads as follows.

FIRST CHARGE Not Guilty

SECOND CHARGE_____

THIRD CHARGE_____

FOURTH CHARGE_____

FIFTH CHARGE_____

SIXTH CHARGE_____

SEVENTH CHARGE_____

EIGHTH CHARGE_____

NINTH CHARGE_____

TENTH CHARGE_____

ELEVENTH CHARGE_____

TWELFTH CHARGE_____

THIRTEENTH CHARGE_____

FOURTEENTH CHARGE_____

FIFTEENTH CHARGE_____

SIXTEENTH CHARGE_____

(For procedure on alternative charges, see R.P.37, fn 2)

Further proceedings are recorded on Pages hereto attached.

PAGE "A"

(For use when accused pleads guilty to all charges)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President).

1. R.P. 35(B) is complied with by the President, ascertaining that 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 the Accused
Q. Do you desire to make any statement of the circumstances, in reference to the charge (s) (R.P.37(B)) Ans._____

(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).

3. 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)).

4. President to the Accused:
Q. Do you wish to make any statement in mitigation of punishment? (R.P. 37(C). Ans_____

(Statement (if any) is recorded on separate sheet, initalled by the President and attached hereto. No cross-examination).

5. President to the Accused
Q. Do you wish to give evidence yourself or call any witnesses as to character? (R.P.37(C)). Ans._____

(Such evidence, confined to character only, is recorded on separate sheet, initalled by the President and attached hereto).

6. 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(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 " ", and " ", initialled by the President and attached to the proceedings. (R.P. 46; Overseas R.O. 3131).

7. President to the Accused:
Q. Do you wish to address the Court on your Statements of Character, Service and Conduct in further mitigation of punishment? (R.P.46(D)). Ans_____(No cross examination).
(Record address, if any, on separate sheet, initalled by the President and attached hereto).

8. The Court is now closed to consider sentence.(Record on Page 2 of A.E.A.3)
(Punishments, A.A.44, K.R.(Can)563-566; one sentence only awarded, (R.P.48). Sentence should be dated

NOTE: When the President announces that "The Court is closed for the consideration of the sentence", he will add that "the sentence is 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".
The sentence is not announced to the accused by the Court.

(Signature of the President)

PAGE "B"

(For use when accused pleads "Not Guilty" to all Charges

(All printed matter not applicable to be struck out, and all alterations, erasures, and additions to be initialled by the President).

1. President to the accused
Q. Do you wish to apply for any 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? (R.P. 39(A)). Ans. No ans

2. The Prosecutor's opening address(if any)(R.P.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").

3. The Prosecution is closed.(If submission that there is no prima facie case established, see R.P.40 fn1;R.P.70 fn 1).

4. 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)).

5. President to the accused:
Q. Do you apply to give evidence yourself as a witness?Ans No ans
Q. Do you intend to call any other witnesses in your defence?
Ans. Yes ans
Q. Is he a witness as to character only? (F.P.40(B)) Ans No ans

6. The evidence for the Defence(if any) is recorded on separate sheets, initialled by the President and attached hereto.

7. The closing address 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).

8. The court is now closed to consider the finding(Rs P 43 and 117

9. The court being re-opened, the accused is again brought before it, and the findings of "Not Guilty"(~~if any~~) are pronounced and ~~if findings of "Not Guilty" on all charges~~, the accused is released.

~~Where the Court acquits the accused of one or more charges and find him guilty of any other charge or charges, the President of the Court, when announcing the findings of not guilty will add that "The findings of the Court on the.....charge(s) being subject to confirmation, will be promulgated later".~~ JB

10. Statement of Character and Service (A.F.B.296) and Field Conduct Sheet (MFM 6) signed in the manner required by AA 163(1)(h) and purporting to refer to the accused by his number(if any) rank, name and Corps, are produced to the Court, read, marked " ", and " ", initialled by the President and attached to the proceedings, (R.P. 46; Overseas R.O.3131).

11. President to the accused:
Q. Do you wish to address the Court on the Statements of Character, Service and Conduct and in mitigation of the punishment(R.P. 46(D)). Ans._____(No cross examination).
(Record address, if any, on separate sheet, initialled by the President and attached hereto.

(Continued) JB

(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).

1. R.P.35(B) is complied with, in respect to "Guilty" pleas, by the President ascertaining that accused understands the nature of the charge(s)(fn 3) and his plea thereto, explaining the difference in procedure by the plea(RP37)(B) and advising him to withdraw his plea if he thinks the accused ought to plead "Not Guilty" thereto.

2. President to the Accused:

Q. 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 that you have not had sufficient time for preparing your defence?(R.P.39(A). Ans_____

3. The Prosecutor's opening address(if any) (R.P.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 R.P.40 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)).

6. President to the Accused

Q. Do you apply to give evidence yourself as a witness? Ans_____
Q. Do you intend to call any other witness in your defence? Ans_____
Q. Is he a witness as to character only?(R.P.40(B) Ans._____

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.(RsP43 and 117) (Record Finding on Page 2 of A.F.A.3).

10. The Court being re-opened, the accused is again brought before it and the findings of "Not Guilty"(if any) are pronounced(RP117(B)).

Where the Court acquits the accused of one or more charges and find him guilty of any other charge or charges, the President of the Court, when announcing the finding(s) of not guilty will add that "The findings of the Court on the _____ charge(s), being subject to confirmation, will be promulgated later".

11. The charges, to which the accused pleaded "Guilty" are read to the accused.

12. President to the Accused

Q. Do you desire to make any statem at of the circumstances in reference to the charge(s) to which you have pleaded "guilty"(R.P.37(B) Answer_____

(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 theron).

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 that sufficient evidence be taken and recorded on separate sheet, initialled by the President and attached to the proceedings(RP37(B)

(P. T. O.)

Record evidence in narrative form, i.e, "No. 1357, Corporal W. Jones, W.R., being duly sworn states:- "I am a Corporal of #5 Platoon to which the accused belongs. On 14 Jan 42 at 1500 hrs I ordered the accused to go on parade. He refused and did not do so". If a shorthand writer is employed, he should record the evidence verbatim,i.e.,by questioning and answer. After completion of Examination-in-Chief, enter the words "Cross examined by the Defending Officer" and thereafter record the evidence in the same manner. If the Prosecutor then re-examines, enter the words "Re-examined by the Prosecutor" and record evidence similarly. If a shorthand writer is not employed,the evidence of each witness must be read over to him after he has given evidence and a note made after the evidence of each witness"R.P.83(B) complied with". If a shorthand writer is employed, it shall not be necessary to read the evidence over unless the witness so desires; if the evidence is not read over, a note should be made after the evidence of each witness "In the opinion of the Court and Judge-Advocate, it is unnecessary to comply with R.P.83(B)".

FORM OF OATHS FOR USE IN COURTS MARTIAL

President and Members

"I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law".

Judge Advocate

"I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court martial until it is duly confirmed, and that I will not, on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law".

Shorthand Writer

"I swear by Almighty God that I will truly take down to the best of my power, the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same".

Interpreter

"I swear by Almighty God that I will, to the best of my ability,truly interpret and translate, as I shall be required to do, touching the matter before this court-martial".

Witness

"I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth and nothing but the truth".

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).

1. R.P.35(B) is complied with, in respect to "Guilty" pleas, by the President ascertaining that accused understands the nature of the charge(s)(fn 3) and his plea thereto, explaining the difference in procedure by the plea(RP37)(B) and advising him to withdraw his plea if he thinks the accused ought to plead "Not Guilty" thereto.

2. President to the Accused:

Q. 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 that you have not had sufficient time for preparing your defence?(R.P.39(A). Ans_____

3. The Prosecutor's opening address(if any) (R.P.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 R.P.40 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)).

6. President to the Accused
Q. Do you apply to give evidence yourself as a witness? Ans_____
Q. Do you intend to call any other witness in your defence? Ans_____
Q. Is he a witness as to character only?(R.P.40(B) Ans._____

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.(RsP43 and 117) (Record Finding on Page 2 of A.F.A.3).

10. The Court being re-opened, the accused is again brought before it and the findings of "Not Guilty"(if any) are pronounced(RP117(B)).

Where the Court acquits the accused of one or more charges and find him guilty of any other charge or charges, the President of the Court, when announcing the finding(s) of not guilty will add that "The findings of the Court on the_____charge(s), being subject to confirmation, will be promulgated later".

11. The charges, to which the accused pleaded "Guilty" are read to the accused.

12. President to the 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) Answer_____

(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 theron).

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 that sufficient evidence be taken and recorded on separate sheet, initialled by the President and attached to the proceedings(RP37(B)

(P. T. O.)

PAGE "B" (CONT'D)

12. The Court is now closed to consider the sentence(Record on Page 2 A.F.A. 3).
(Punishments, A.A.44, K.R.(Can)563-566; one sentence only awarded, (R.P.48); sentence should be dated.

When the President announces that "The Court is closed for the consideration of the sentence" he will add 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".

The sentence is NOT announced to the accused by the Court

RP 45(1) and 117(3) complied with

15 Oct 1943

.....
(Signature of President).

RCE 3 Bn 1 CBRD.

Record evidence in narrative form, i.e, "No. 1357, Corporal W. Jones, W.R., being duly sworn states:- "I am a Corporal of #5 Platoon to which the accused belongs. On 14 Jan 42 at 1500 hrs I ordered the accused to go on parade. He refused and did not do so". If a shorthand writer is employed, he should record the evidence verbatim,i.e.,by questioning and answer. After completion of Examination-in-Chief enter the words "Cross examined by the Defending Officer" and thereafter record the evidence in the same manner. If the Prosecutor then re-examines, enter the words "Re-examined by the Prosecutor" and record evidence similarly. If a shorthand writer is not employed,the evidence of each witness must be read over to him after he has given evidence and a note made after the evidence of each witness"R.P.83(B) complied with". If a shorthand writer is employed, it shall not be necessary to read the evidence over unless the witness so desires; if the evidence is not read over, a note should be made after the evidence of each witness "In the opinion of the Court and Judge-Advocate, it is unnecessary to comply with R.P.83(B)".

FORM OF OATHS FOR USE IN COURTS MARTIAL

President and Members

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law".

Judge Advocate

" I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court martial until it is duly confirmed, and that I will not, on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law".

Shorthand Writer

"I swear by Almighty God that I will truly take down to the best of my power, the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same".

Interpreter

"I swear by Almighty God that I will, to the best of my ability,truly interpret and translate, as I shall be required to do, touching the matter before this court-martial".

Witness

"I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth and nothing but the truth".

14. President to accused:

Q. Do you wish to make any statement in mitigation of punishment? (R.P.37(C) Ans_____
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? (R.P.37(C) Ans_____

16. Statement of Character and Service(A.F.B.296) and Field Conduct Sheet (M.F.M.6) signed in the manner required by AA 163(1)(h) and purporting to refer to the accused by his number(if any) rank,name and Corps, are produced to the Court, read, marked " ", and " ", initialled by the President and attached to the proceedings. (R.P.46; Overseas R.O.3131).

17. President to the accused

Q. Do you wish to address the Court on the Statement of Character Service and Conduct and in mitigation of punishment?(R.P.46(D). Answer_____. 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 A.F.A.3).

When the President announces that "The Court is closed for the consideration of the sentence", he will add 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".

.....
(Signature of President)

PAGE "E"

RECORDING AND DISPOSAL OF PROCEEDINGS

1. The original record, only, is required except where the charge(s)is (are) one(s) respecting injuries sustained by the accused, when a true copy thereof will be prepared and forwarded.

2. All alterations, interlineations and erasures shall be initialled by the President or Judge-Advocate (if any).

3. The President or Judge Advocate(if any) will attach all documents at the top left corner thereof to the top of page 3 of this form in the following order.

(i) Charge Sheet initialled by the President.
(ii) Medical Certificates, initialled by the President.
(iii) Record of Evidence, initialled by the President,with the pages numbered consecutively.
(iv) Exhibits, in order of production, marked as such by consecutive letters and initialled by the President.
(v) The Summary of Evidence(if not already an exhibit) and initialled by the President.
(vi) Declaration (if any) under R.P.104 (Form - MML p.741) and initialled by the President.

4. The heading of each of the three pages "A", "B" and "C" indicates the nature thereof. As occasion requires, the appropriate page will be used and the others returned with the Proceedings to the Confirming Officer or to the D.J.A., H.Q., 1st Cdn Army in accordance with the appropriate drill for different formations. The delivery of the documents should be made without delay by the speediest method. When not delivered by hand by the President, they should be accompanied by a covering letter in an envelope marked "Confidential". The release of exhibits will not be granted until after confirmation and review of the proceedings. Application therefore must be made to the J.A.G. Branch, C.M.H.Q. through the normal channels.

JB

First Witness for the Prosecution

C35062 Cpl. Häggard, J. 1 Bn. HQ, 1 CBRD having been duly sworn states —

"I am employed as the pay corporal in #1 Bn 1 CBRD. On 13 Oct 1943 at approx. 1330 hrs I sent a chit to "C" company with a list of six or seven men whose paybooks were to be turned in to the payoffice that day. I received all these books except that of Pte. Quellette. The paybooks referred to were "Books, M.B.M. Part 1"

Cross questioned by defense

"The paybooks were called for after the main parade 29 Sept '43. A man may not draw money if he is overdrawn on his account unless he has a "chit" from the colonel"

Question by court

"Pte. Quellette's name was on the chit sent to "C" coy."

R.P. 83(B) complied with.

Second Witness for prosecution

E42418 Cpl. Morin R. 1 Bn 1 C.B.R.D. having been duly sworn states —

"I was ordered by the payoffice to collect six or seven paybooks. The accused refused to give me his although I told him it was the paymasters' order. The accused said "Put me on charge if you want to", or words to that effect. The name of the accused was on the list I received from the payoffice. I reported that the accused would not, and did not, give me his paybooks to C.S.M. Rochon. On Monday 4 Oct '43 I sent the accused give his paybooks to the colonel."

Crossquestioned by defense

"The accused was in his tent with Sgt. Samson and some others when I asked him for his paybooks. Sgt. Samson was in the tent when I entered and when I left. I did not charge the accused for the disobeying an order as the C.S.M. said he would "see to it". I don't know if the C.S.M. laid a charge then or not"

JB

Question by court

"It was approx. 1600 hrs. on Friday 1 Oct. '43 that I asked the accused for his paybook. The accused, I recognize him, is the Quellette whose name was on my list. When the accused said "Put me on charge if you want" I cannot remember what else was said.

R.P. 83(B) complied with.

Third Witness for prosecution

E4430 Sgt. Samson R., 1 Bn 1 C.B.R.D.

having been duly sworn states —

"I recognize the accused. I was present when Cpl. Morin asked him for his paybook. The accused did not give Cpl. Morin his paybook when I was present. The accused was not placed under arrest at that time"

Crossquestioned by the defense.

"The accused said to Cpl. Morin "I did 'nt get paid and nobody is going to get my paybook" or words to that effect. I was in the tent when ~~the accused~~ Cpl. Morin entered. The accused made no statement in front of me about wishing to give his paybook to the company commander or the C.O.

R.P. 83(B) complied with.

Fourth Witness for the prosecution

D5/220 A/C.S.M. Rochon, J.G. 1 Bn 1 C.B.R.D.

having been duly sworn states —

"Cpl. Morin reported to me that the accused would not give him his paybook about 1700 hrs. I did not place the accused under arrest at this time, nor at any time between 1700 and 1900 hrs. that day, and no charge was laid during that period. At approx. 1930 hrs. I was in the stores when the accused came in and I said to him, "you refused to give your paybook to Cpl. Morin, give it to me" He replied "I hav'nt got it" I told Pte. Arcand to place him in the guardroom. I placed him under arrest because he had not given his paybook to Cpl. Morin. I was not doing duties at 1900 hrs. Ptes Arcand and Goyer were with me. I did not send for the accused at this time"

R.P. 83(B) complied with.

JB

FIRST WITNESS FOR THE DEFENSE

D51146 Pte. Aubette A., the accused No. 1 Bn. 1C.B.R.D. having been duly sworn states —

" On 30 Sept. 1943 I went on pay parade but my name was not on the roll call and I was told to appear at the pay office the next morning for pay. The next morning 1 Oct '43 at 0900 hrs I went to the pay office but I was given my book and no pay. The pay sergeant told me I was not entitled to any pay. I went to my company office and asked the C.S.M. to parade me to the company commander. I was of the impression that I was entitled to ten shillings a pay day, and I wanted the company commander to parade me to the C.O.

The C.S.M. went in to the company commander and returning told me that pay matters did not concern the company office. I then went to see the B.S.M. who took my name and told me that he would enquire into the matter.

At 1600 hrs. Cpl. Morin asked me for my paybook. I told him that I had asked to be paraded that morning, and explained the case to him. I told him I wished to complain to the C.O. Cpl. Morin again asked me for the paybook and I gave him the same answer " I have not been paid. I wish to surrender my paybook to the C.O. and complain about my wrong", or words to that effect. Cpl. Morin said that he would place a charge against me.

About 1900 hrs the same day I went to the Q.M. to get a candle. C.S.M. Rochon was there. He grasped the collar of my shirt with his right hand and said " You refused to give your paybook to Cpl. Morin. Give it to me! I did not answer him. Keeping hold of me with his right hand he tried to take my paybook with his other hand. I endeavoured to stop him, and told him he was not entitled to search my pockets. There were other men in the room. The C.S.M. said " Arcand escort this man to the guardroom" I was placed in the guardroom immediately.

The next day I appeared on company orders and was remanded in custody until Monday. On CO's orders Monday

3B

I referred the C/S's punishment and was remanded for a summary of evidence."

Cross Examined by prosecution

"I did not give my paybooks to Pte. Martin when he asked me and did not intend to give it to him"

Re-examined by defence

"I did not give my paybooks to Pte. Martin as I realized that I would thus forfeit my pay & all the C/S"

R.P. 83(B) complied with.

SECOND WITNESS FOR THE DEFENSE

K47002 R.S.M. Pearce H.R., R.S.M. No 1. Bn 1.C.B.R.D. having been duly sworn states

"At approximately 1 Oct, the accused came to my office and stated he wished to intervene the C/S. I asked the accused his reason and he stated he was having some difficulty with his pay. I suggested that he see the R.S.M., and said I would look into the matter. I told him to report to me later the accused told me that he had endeavoured to proceed to the C/S through his company office. He did not report back to me. I told the R.O.S. to note his remarks.

R.P. 83(B) complied with.

THIRD WITNESS FOR THE DEFENSE

E5733 Pte. Baird L., 1 Bn 1.C.B.R.D. having been duly sworn states —

"On the afternoon 1 Oct. 1943 I was in a tent with the accused. At approx. 1600 hrs. Pte. Martin entered and asked the accused for his (the accused) paybook. The accused did not give Pte. Martin the paybook. He told Pte. Martin that he wished to see the C/S.

R.P. 83(B) complied with.

JB.

FOURTH WITNESS FOR THE DEFENSE

DS1079 Pte. Ducas, T. 1 Bn 12 BRD having been duly sworn states —

" On afternoon 1 Oct 1943 I was in a tent with the accused. At approx 1200 hrs Cpl. Morin came in and asked the accused for his paybooks. The accused did not give his paybooks to Cpl. Morin, but told Cpl. Morin that he wished to be paraded to the colonel "

R.P. 83(B) complied with

JB

Closing address to court by defense

" It has been proven that the paybooks was refused Cpl. Morin. No charge was laid by Cpl. Morin. Pte. Deschelle tried through every channel to reach his company commander, the paymaster and the co but at no time was able to do so.

I submit that the accused did not refuse to give up his paybooks, but rather that he asked, by inference, that he be paraded to the co, which is the right of every soldier. Had the accused refused to hand over his paybooks he would have then been immediately placed under arrest."

Summing up of prosecution

The defence admits the accused refused to give up his passbook. None of the defence evidence is relevant to the case. The subsequent events after offence have no bearing on the charge.

Summary of Evidence
in the case of

D-51146 Pte Ouellette A, on the strength of C Company, 1 Battalion, 1 Cdn Base Rft Depot, a soldier of the Canadian Army Overseas.

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

First Witness For the Prosecution

E-42418 A/Cpl Morin R, on the strength of C Company 1 Battalion, 1 Cdn Base Rft Depot, having been duly sworn states:

At about 1600 hrs on the 1st Oct 43. I received the order from the Paymaster's Office to ask D-51146 Pte Ouellette A for his M.B.M. 1 Part 11 pay book. I asked him to give it to me. Then D-51146 Pte Ouellette A.refused to give it to me. So I warned him that it was an order, he did not give me the book, but said, "make a charge if you want , I am not going to give it to you."When D-51146 Pte Ouellete A was paraded to the C.O. I was present, I gave evidence that I was present when D-51146 Pte Ouellette A had been paraded before the Coy Commander and had refused to give him his M.B.M. 1 Part 11 paybook. Then Lt-col Bristowe ask him if he had his paybook, he answered "Yes" and gave it to him.

The accused declines to cross examine the witness

Second Witness For the Prosecution

E-4430 Sgt Samson R on the strength of C Company 1 Battalion, 1 Cdn Base Rft Depot, having been duly sworn states:

I was present when E-4241 A/Cpl Morin R asked the accused to give him his M.B.M.1 Part 11 Paybook. So D-51146 Pte Ouellette A answered"this paybook is mine I have not been paid, and I keep it." Cpl Morin told him that he was going to lay a charge against him.

The accused declines to cross examine the witness.

Third Witness For the Prosecution

D-57220 A/CSM Rochon J.G. on the strength of C Company 1 Battalion, 1 Cdn Base Rft Depot, having been duly sworn states:

On the 1st Oct 43, E-42418 A/Cpl Morin R reported to me at about 1630 hrs that D-51146 Pte Ouellette A had refused to give his paybook. The same day at about 1900 hrs I put D-51146 Pte Ouellette A under close arrest telling him that it was because he had refused to give his paybook to E-42418 A/Cpl Morin R.

On the 2nd October 43, I was present when D. 51146 Pte. Ouelette, A. was paraded to the Company Commander, Capt. Chicoine, J.H. and when asked by Capt Chicoine, J.H. to give him his pay book he said, I havent got it. Capt. Chicoine, J.H. asked him where is your pay book. The accused answered I have lost it. He was then remanded to C.O. and turned back to the Guard Room.

J.G. Rochon A/CSM

THE ACCUSED DECLINES TO CROSS EXAMINE THE WITNESS

The accused D. 51146 Pte. Ouellette, A. asked that it must be stated in the Summary of Evidence that E.42418 A/Cpl. Morin, R. and C.S.M. Rochon, D.57220 where both present when they gave evidence.

4th WITNESS

C.35062 Cpl. Huggard, J. on the strength of the Paymaster's office, No. I Battalion No. I Canadian Base Reinforcement Depot, having been duly sworn states:

At 1330 hrs 1 Oct. 43. I send a chit with a list of names, to have their pay books submitted to the pay office that day, The paymaster needed those books to check as the personnel were on draft, I received all pay books which where listed on that chit, one which was Pte. Ouelette.

J. Huggard, Cpl.

The accused declines to cross examine the witness.

The accused is cautioned in accordance with Overseas Routine Order 1424.

The accused reserved his defence.

I certify that the foregoing Summary of Evidence consisting of 2 pages was taken down by me in the presence and hearing of the accused and that the rules of procedure, 4 (c),(d),(e),(f) and (g) have been complied with.

In the Field
11 Oct 43.

Summary of Evidence
In the Case of

D 51146 Pte Ouellette, A on the strength of "C" Coy No 1 Battalion, No 1 Cdn Base Reinforcement Depot, a soldier of the Canadian Army Overseas

By direction of the Commanding Officer, the Summary of Evidence is taken under oath

1st Witness E 42418 A/Cpl Morin R on the strength of "C" Coy No 1 Battalion, No 1 Canadian Base Reinforcement Depot having been duly sworn states:—
"At about 1600 hrs, on the 1st Oct 43 I received the order from Pay master office to ask to D 51146 Pte Ouellette, A for his M B M 1 Part II pay Book. I asked him to give it to me. Then D 51146 Pte Ouellette A refused to give it to me. So I warned him that it was an order, he did not give me the book but said ~~I haven't got it~~ Make a charge if you want, I am not giving it to you
When D 51146 Pte Ouellette A was paraded to the C.O. I was present I gave evidence that I was present when D 51146 Pte Ouellette A had been paraded before the Coy Cmd and had refused to gave him his M B M 1 Part II pay book. Then Lt Col Bristowe ask him if he had his pay book, he answered yes, and gave to him

[signature]

The accused declines to cross examine the witness

2nd Witness E 4430 Sgt Samson, R on the strength of "C" Coy No 1 Battalion No 1 Cdn Base Reinforcement Depot having been duly sworn states
I was present when E 42418 A/Cpl Morin R asked the accused to give him his M.B.M. 1 Part II Pay Book So D 51146 Pte Ouellette, A answered this pay book is mine I have not been paid, and I keep it Cpl Morin told him that he was going to lay a charge against him

Sgt Samson.

The accused declines to Cross examine the Witness

3rd Witness

D 57220 C.S.M. Rochon, J.T. on the strength of Coy No 1 Battalion, No 1 Canadian Reinforcement Depot, having been duly sworn states:—

On the 1st Oct 43, E 42418 A/Cpl Morin R. reported to me at about 1630 hrs that D 51146 Pte Ouellette A had refused to give his pay book. The same day at about 1900 hrs I put D 51146 Pte Ouellette, A. under close arrest telling him that it was because he had refused to give his pay book to E 42418 A/Cpl Morin R. On the 2nd Oct 43 I was present when D 51146 Pte Ouellette, A was paraded to Coy Cmdr Capt Chicoine, J.H. and then when asked by Capt Chicoine J.H. to give him his pay book he said, I havent got it. Capt Chicoine J.H. asked him where is your pay book. The accused answered: I have lost it. He was then remanded to C.O. and turned back to the Guard Room.

J.G. Rochon

The accused declines to cross examine the witness

The accused D 51146 Pte Ouellette, A. ~~reserved~~ asked that it must be stated in the summary of Evidence that E 42418 A/Cpl Morin, R and C.S.M. Rochon, D 57220 where both present when they gave evidence.

4th Witness C 35062 Cpl Huggard C. on the strength of the Paymaster's Office No 1 Battalion, No 1 Cdn Reinforcement Depot, having been duly sworn states:—

At 1330 hrs 1 oct 43, I send a shit with a list of names, to have their pay books submitted to the pay office that day. The Paymaster needed those books to check as the personnel were on draft. I received all pay books with where listed on that shit except one which was Pte Ouellette A.

J Huggard.

The accused declines to cross examine the witness

The accused is cautioned in accordance with Overseas Routine Order 1424

The accused reserved his defence

I certify that the foregoing summary of Evidence consisting of 2 pages was taken down by me in the presence and hearing of the accused, and that the rules of procedure, 4(c)(d), (e) and (f)(g) have been complied with.

11 oct 43

Paquette Capt R22R

List of Witnesses

For the Prosecution

E-42418 A/Cpl Morin R, on the strength of C Company, 1 Battalion, 1 Canadian Base Reinforcement Depot

E-4430 Sgt Samson R on the strength of C Company, 1 Battalion, 1 Canadian Base Reinforcement Depot.

D-57220 A/CSM Rochon J.G. on the strength of C Company, 1 Battalion, 1 Canadian Base Reinforcement Depot.

C-35068 Cpl. Huggard J. on the strength of BN HQ's 1 Battalion, 1 Canadian Base Reinforcement Depot.

For the Defence NIL

List of Exhibit NIL

L. C. M. 124

Lieut. Mullet, C. E.

Gem 124 1

Army Form A 9.

A

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

12 Aug 43

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

Proceedings of a GENERAL Court-Martial held at Farnborough, Hants on the 12th day of AUGUST 19 43 by order of

MAJOR GENERAL J H ROBERTS DSO MC

Commanding CANADIAN REINFORCEMENT UNITS

dated the 9th day of AUGUST 19 43

President.

Colonel Louis Keene, E D Comd "F" Gp

Members.

Lt-Col. G F Clingan MC ED C H of O 5 CIRU
Major N D Theobald MC Westmr Regt 5 CIRU
Major J G Perrigard C A C 2 CACRU
Captain H W Gauthier C A C 2 CACRU

WAITING MEMBERS

Major O C O'Connor-Fenton H & PE Regt 5 CIRU
Major J P Gautier C A C 1 CACRU

Captain G. E. Trtischler, Barrister-at-law, HQ C R U, Judge Advocate.

Trial of* Lieut Charles Eugene Ouellet, R de Chaud 2 CIRU

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 taken in 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,† Captain A. F. Cannon, R 22e R, 6 CIRU

~~Cadet~~ or defending officer† Lieut. W. Marchand, R de Chaud 2 CIRU

At 1340 o'clock the Trial commences.

The order convening the Court is read, and is marked "G", 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.

Q4274. Wt.W16839/76. 35,000 sets. 6/40. K. & H., Ltd. G657/11. Forms A 9/55.

Bernard Cl. Capt
26 Aug 43

2

B

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

The following officers under instruction are duly sworn.
Lieut M. H. Thomas-Peters R C C S

Q (To the accused) Do you object to D24030 S/Sgt JH Spence, RCCS, acting as shorthand writer?

A No, sir.

D24030 S/Sgt J.H. Spence, RCCS, attd HQ CRU, ~~shorthand~~ is duly sworn as shorthand writer.

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, 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 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.*

3

CHARGE SHEET

The accused, Lieutenant Charles Eugene OUELLET, Le Regiment de la Chaudiere, on strength of 2 Canadian Infantry Reinforcement Unit, an officer of the Canadian Army Overseas, is charged with:-

Army Act
Sec 40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at Laurentide Camp, Surrey, on or about 7th July, 1943 borrowed the sum of £2:0:0 from a subordinate, K-67486 Corporal ELLIS, A. (Calgary Highlanders), 2 Canadian Infantry Reinforcement Unit, giving him a personal post-dated cheque for that amount.

Laurentide Camp.
5 August, 1943.

.....
(M. K. Greene) Colonel
Officer Commanding,
2 Canadian Infantry Reinforcement Unit

To be tried by General Court-Martial.

(J.H. Roberts) Maj-Gen.,
Comd, Cdn Rft Units.

In the Field,
9 Aug 43

B2

C

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

Proceedings on Plea of Not Guilty.

*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 ~~based on a written address which is read, marked ~~ ~~signed by the President, and attached to the proceedings.~~~~ (See attached) "AA"

The prosecutor proceeds to call witnesses.

First witness for prosecution. K67486, Corporal Ellis, A, Calg Highrs, 2 CIRU

being duly sworn, is examined by the prosecutor.

Q 1 Tell the Court in your own words exactly what happened in relation to Lieut Ouellet, do you recognize Lieut Ouellet sitting on your left?
A 1 Yes, sir. On or about the 7th of July of this year Mr. Ouellet approached me and said that he was going on a weekend leave to London and that he didn't have sufficient funds. I told him that I, myself, didn't have a great deal of money, but I could loan him £2/0/0. Mr. Ouellett gave me a post-dated cheque for the amount. When that cheque became due, that is on the 30th of July of this year I took it to the paymaster's office to get it cashed. The paymaster refused to cash the cheque. The next day, which was the 31st of July, I contacted Mr. Ouellet up at 6 C IR U and I told him I had been advised to get the £2/0/0 from him and give him back his cheque. Mr. Ouellet told me that he had been under arrest at 2 CIRU camp and that his bank account had been closed, but he hoped that by the middle of next week that it would be opened. I was later on paid the £2/0-0 by Mr. Ouellet in cash. I didn't give him the cheque for the £2/0/0 but I gave him a receipt I had for the cheque, which was in someone else's possession.
Q 2 What is this document?
A 2 That is the cheque I received from Mr. Ouellet

BY THE JUDGE ADVOCATE:

Q 3 Whose signature is it?
A 3 That is Mr. Ouellet's signature.
Q 4 When you say Mr. Ouellet who do you mean?
A 4 The gentleman over here (indicating the accused)

(Document referred to produced, marked "H", signed by the President, and annexed to the proceedings.)

BY THE PROSECUTOR:

Q 5 Regarding this receipt for the cheque which you received, you turned that cheque over to someone else, do you remember who it was?
A 5 I believe it was Captain Courts, he was the Assistant Adjutant.
Q 6 He was then taking a summary of evidence, was he?
A 6 Yes, sir.

447

Q 7 You obtained a receipt from Capt. Courts for the cheque and on receipt of the £2.0.0 you turned the receipt over to Mr. Ouellet?
A 7 Yes, sir.

BY THE JUDGE ADVOCATE:

Q 8 Did you or did you not give any money to Lieut O,,ellet?
A 8 I gave Lieut. Ouellet £2.0.0 for which I received that cheque, Exhibit "H"
Q 9 And on what day did you give him that money?
A 9 I am not sure as to what day it was, but I believe it was around the 7th day of July

BY THE PROSECUTOR:

Q 10 And where was that, Corporal?
A 10 At 2 CIRU CAMP.

BY THE JUDGE ADVOCATE:

Q 11 Did you see that cheque written?
A 11 Yes, sir.

CROSS EXAMINED BY THE DEFENDING OFFICER:

Q 12 Have you got a good memory?
A 12 I wouldn't say that I have an excellent memory, no sir.
Q 13 What day did Lieut. Ouellet give you that cheque for £2.0.0?
A 13 That is one thing which I can't swear to, because I don't just remember whether he gave it to me at the time I gave him the £2.0.0, it was either at the time or shortly after.
Q 14 If I told you that you received that cheque on the 20th of July, and you have told the Court that you gave the money to Mr. O,,ellet on the 7th of July, or about the 7th, that is 13 days difference. Can you state why there is so much difference between the supposed borrowing of money and the date Lieut. O,,ellet gave you the cheque?
A 14 In other words you are trying to tell me that Mrs. O ellet gave me that cheque on the 20th of July?
Q 15 Yes?
A 15 I think I may truthfully say that I had that cheque in my po session for longer than that. Actually I wasn't so concerned over the £2.0.0 that I was worrying about what date I loaned him the money, or what date he gave me a cheque for it, because I know that when you give a cheque, especially a post-dated cheque when that cheque becomes due you must redeem it.
Q 16 But you don't remember the exact date?
A 16 No, but I would be willing to swear that I had carried that cheque for quite some time previous to going into the paymaster's office to have it cashed.
Q 17 Had you seen the signature of Lieut. Ouellet before?
A 17 Yes, I have seen his signature before, in fact when we get a pass at our Camp the Mortar Officer has to sign the application for the pass.
Q 18 And you had seen the same signature as it is on that cheque?
A 18 That is Mr. O,,ellet's signature.
Q 19 Have you got any witnesses who can prove you gave him the money on the 7th?
A 19 No, sir.
Q 20 Do you know Lie t. Ouellet very well?
A 20 He was the 3 inch mortar officer of the school and I was an instructor, naturally we were thrown together quite a lot during the period which he was at 2 CIRU. I couldn't say I know him well, but I knew him quite well.
Q 21 Do you know that Lieut. O ellet used to be very generous everywhere he goes?

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THE PROSECUTOR: Objection, the matter of Lieut. Ouellet's generousity is not at stake here.

THE PRESIDENT: Objection sustained.

BY THE DEFENDING OFFICER:

Q 22 Do you make sometimes commissions or give any help or services to Lieut. Ouellet when you were on your mortar platoon, as your officer?
A 22 Not outside of just giving the lectures.
Q 23 But during the lectures?
A 23 I used to give some lectures
Q 24 When he asked you to go somewhere to make commissions, like if I ask you to go over there, will you go and bring me back some cake, or like going to the canteen or anything like that?
A 24 You wish to know if I ever went to the canteen for Mr. Ouellet?
Q 24 Yes?
A 25 Yes, I have gone to the canteen to buy something for Mr. Ouellet, possibly during the time around 10 o'clock, or when there was a break period, we would get a lunch from the NAAFI.
Q 26 Did you used to pay for that sometimes yourself?
A 26 Yes, I generally took my turn at paying for the lunches.
Q 27 Did you know that Lieut. Ouellet was to go back shortly to 6 CIRU ?
A 27 I knew that Mr. Ouellet had come from ± 6 CIRU, or as I was informed, but I had never been informed by anyone as to where he was going after he left. I heard he was leaving 2 CIRU.
Q 28 Don't you suppose he gave you that cheque as gratitude or a gift for services rendered by you to him?

THE PROSECUTOR: Objection.

THE PRESIDENT: No, I think that is a fair question.

A 28 I am paid as a non-commissioned officer by the people of Canada. I don't accept from no officer no gifts or remunerations for my services to my country, sir.
Q 29 But can you suppose it may be done just the same?

THE JUDGE ADVOCATE: I don't think it is fair to ask the witness if it may be done. Put the question: "Did he give you that cheque as a gift or as compensation for some service rendered, or otherwise?" Don't suppose something, ask him the facts.

Q 30 Did Lieut Ouellet tell you something when he gave you that cheque?
A 30 Lieut. Ouellet gave me that cheque for the £2/0/0 Which I loaned him and at that it was a post-dated cheque and when that cheque should have been good it, to my knowledge, wasn't good and I never for one moment accept anything from an officer in remuneration for my services.
Q 31 You stated in your evidence a few moments ago that Lieut. Ouellet told you one day he was going on a weekend to London. Are you sure he said London?
A 31 That is as far as I remember. Whether he went to London or not I don't know.
Q 32 If I tell you he told you he was going to Shoreham, can you remember that?
A 32 As far as I can remember he was going to London.
Q 33 Are you sure he told you his bank account was closed because he had been in close arrest for a while?
A 33 He told me up at 6 CIRU that he had been under arrest-- I don't know what kind of arrest it was at 2 CIRU, that his bank account had been closed but he expected that it would be opened up again by the middle of the next week.
Q 34 Now, did Lieut. Ouellet sign that cheque in front of you?
A 34 He wrote that cheque out at No. 4 lecture room and signed it and gave it to me in No. 4 lecture room.

(In the opinion of the Court and the J.A. it is unnecessary to comply with RP83(

THE PROSECUTOR: That closes the prosecution's case, sir.

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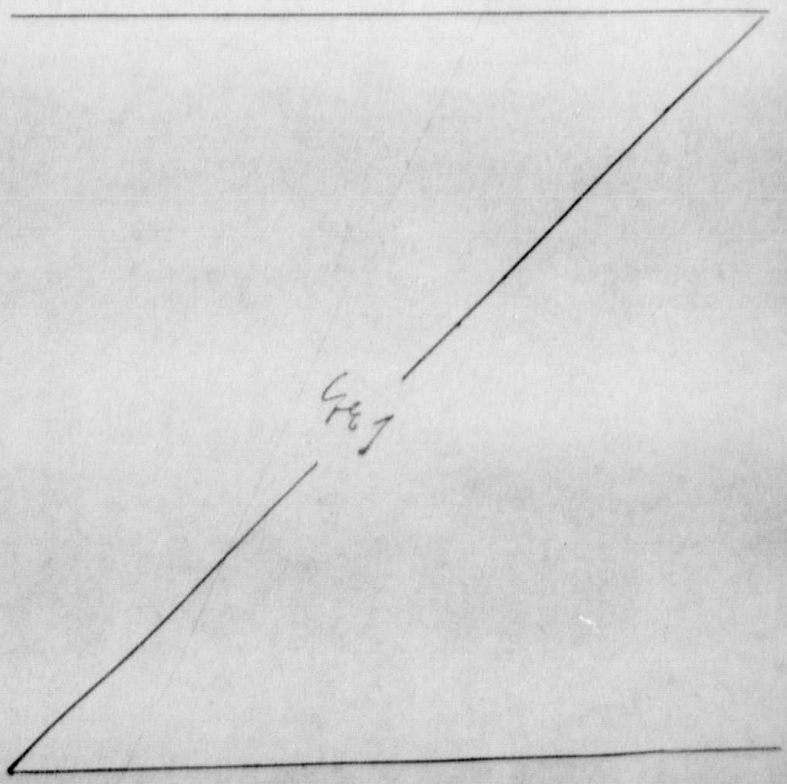
11

THE JUDGE ADVOCATE: At this stage it is my duty to advise you, the accused, as to your rights in the general conduct of your defence. The procedure to be followed depends entirely on the answers given to the formal questions which are about to be put to you. It is therefore important that you should understand and appreciate the effect of your answers to these questions.

You do not need to give evidence on oath unless you wish to do so. But if you do give sworn evidence, you are liable to be cross-examined by the Prosecutor and questioned by the Court and by myself.

If you do not give evidence on oath, you are entitled to make a statement giving your account of the subject of the charge against you. You will not be sworn and no question may be put to you by the Court or any other person with respect to such statement. I must warn you, however, that evidence given on oath will carry more weight with the Court than a mere statement not on oath. Do you understand that?

THE ACCUSED: Yes.



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.*

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?

Answer. The accused in his defence says:† [handed in a written address which is read, marked signed by the President and attached to the proceedings.]

Instruction.

† 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*.)

The 1st Witness for the Defence, the accused, Lieut. Charles Eugene Oulett, R de Chaud. 2 CIRU, having been first duly sworn, is examined

BY THE DEFENDING OFFICER:

Q 35 When did you give a cheque to Corporal Ellis?
A 35 On the 20th of July, 1943
Q 36 What did you say to the Corporal when he told you he couldn't change the cheque at the paymaster's office?
A 36 I just told him I will give you the money for this cheque.
Q 37 Did you tell Corporal Ellis your bank account had been closed for a while and it was to be opened in a little while?
A 37 I never mentioned a word about that to him.
Q 38 Did you tell Corporal Ellis you were going to London on a weekend?
A 38 No, because I hadn't been in London, just one afternoon, and I always go to Shoreham, so I never told him I was in London .
Q 39 Now, that chequeyou gave Corporal Ellis, was it written in front of him or somewhere else?
A 39 It was not written in front of him
Q 40 And did you tell Corporal Ellis you were going to leave the Camp pretty soon?
A 40 I definitely told him I was going to leave that camp in two or three days, when I gave him that cheque.
Q 41 Did Corporal Ellis make commissions for you sometimes and give you also cigarettes?
A 41 He certainly did, I remember, sometimes, I can't mention how many times he did, and a lot of commissions on my instructions, such as going to the canteens for cakes, and some other times he gave me cigarettes when I was short, and he also helped me as an instructor. That is about all I can remember that he did for me.
Q 42 Were you always paying for that, or did he pay sometimes himself?
A 42 Most part of the time he was doing that himself, having in mind I would give it to him later.

CROSS-EXAMINED BY THE PROSECUTOR:

Q 43 You said that the cheque was given to Corporal Ellis on the 20th of July?
A 43 That is right.
Q 44 That is to say you gave him a cheque on the 20th of July, dated the 30th of July?
A 44 Yes.
Q 45 You said just a moment ago that you told Corporal Ellis you would give him the £2/0/0 for the cheque?
A 45 Yes, because I was going to give him £2/0/0 because he was in trouble with that cheque. I said I didn't want him to get into any more trouble with that cheque so I would give him £2/0/0 for it.
Q 46 At the time Cpl Ellis received the cheque and you had received the £2/0/0 to go on leave with, from that time until the time you came back--
A 46 (Interrupting) I never said I received £2/0/0 from him.
Q 47 Do you deny having received £2/0/0 from Corporal Ellis?
A 47 I never borrowed £2/0/0 from Corporal Ellis.
Q 48 You didn't borrow £2/0/0 from Corporal Ellis?
A 48 No, not at all.
Q 49 On or about the 31st of July you told Coproral Ellis you would pay him £2/0/0 for the cheque?
A 49 Yes.
Q 50 You also stated that Corporal Ellis performed commissions for you?
A 50 Yes, he did.
Q 51 And two instances that come to your mind were one that he went over and got things to eat and the other that if you were out of cigarettes some times he would give you some of his cigarettes?
A 51 Yes.
Q 52 Do you know if you gave him back every cigarettes you have had from him?
A 52 I never gave him back any cigarettes for those he gave me.
Q 53 What extent were these cigarettes that he gave you?
A 53 I can hardly say.
Q 54 Four or five packages?
A 54 Maybe more or less, I can't tell.

BY THE JUDGE-ADVOCATE:

Q 55 Is that cheque in your own handwriting?
A 55 Yes, sir.
Q 56 And you see it is dated July 30th?
A 56 Yes, sir.
Q 57 And you say you gave it to Corporal Ellis on July 20th?
A 57 Yes.
Q 58 And are we to understand that this was just a gift?
A 58 Yes, it is just a gift, something like that, for services he did for me when I was an instructor there.
Q 59 Then so far as Corporal Ellis's story that you borrowed £2/0/0 from him on or about the 7th of July is pure fiction?
A 59 I never said I borrowed £2/0/0 from him.
Q 60 You deny that entirely?
A 60 Yes.
Q 61 Why, then, did you on July 20th give Corporal Ellis this cheque and post-date it?
A 61 Because I was expecting money from Canada on the 27th or 28th of the month.
Q 62 Was he asking you for money?
A 62 No.
Q 63 Just tell us how you came about giving him this cheque?
A 63 I said I may be leaving in a couple of days, maybe one day, so he did a lot for me, and sometimes you paid and cigarettes and everything else, well I will give you £2/0/0 for that, if you don't mind. He insisted not to take it first of all and after that he put it in his pocket and took it.

BY THE PRESIDENT:

Q 64 Why did you move?
A 64 I was in 2 CIRU for about 2-1/2 months and then I moved to 6 CIRU and then came back to 2 CIRU for this Court Martial

BY THE JUDGE ADVOCATE:

Q 65 You knew sometime ago Corporal Ellis was claiming you had borrowed £2/0/0 from him?
A 65 Sometime ago?
Q 66 Yes?
A 66 No.
Q 67 You heard before this that he was charging you with having borrowed money?
A 67 I don't understand your question.
Q 68 You were present when a summary of evidence was taken?
A 68 Yes.
Q 69 And had you heard before that this charge was being made against you?
A 69 Just in the morning I was advised to go down to 2 CIRU to see the Adjutant and they told me down there, "you are up for Court Martial."
Q 70 Have you ever told anybody before today the story you have just told us?
A 70 I said a few words about that to my defending officer. I told him I had never borrowed money from him
Q 71 And did you tell your Commanding Officer that you hadn't borrowed any money?
A 71 Yes, I told him and I said to about two or three other witnesses that I never borrowed money from this Corporal and I said to two other officers that I didn't borrow money from him.
Q 72 When did you first hear that there was trouble about this cheque?
A 72 When this Corporal came to me on the 30th of July.
Q 73 Was there anything then said about borrowing?
A 73 No.
Q 74 What day did you pay him the money?
A 74 On the day that the summary of evidence was taken because I could change a cheque and give him his money for the cheque.

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Q 75 Did you pay him the money before or after the summary of evidence was taken?
A 75 After.

(In the opinion of the Court and the Judge Advocate it is unnecessary to comply with R.P. 83(B)).

THE DEFENDING OFFICER: The defence is not calling any other witnesses, sir.

CLOSING ADDRESS OF PROSECUTOR:

Mr. President, gentlemen. The matter of whether or not the cheque was signed on the 7th or 20th makes little difference to the offence, as the distinction whether London or Shoreham in the evidence is irrelevant. The witness for the prosecution stated specifically the times and dates, where he was sure of them and where he wasn't sure he admitted he wasn't sure. From the actions of Corporal Ellis it has been brought out by Corporal Ellis himself that he is a man who takes a very great pride in the fact that he is a non-commissioned officer in the Canadian Army. I suggest that a man of that type wouldn't appear as evidence against any person for the payment of a present.

CLOSING ADDRESS OF DEFENDING OFFICER:

The charge against Lieut. Ouellet under Army Act Section 40 is really borrowing money from a subordinate, Corporal Ellis , the sum of £2/0/0, giving a personal post-dated cheque for the amount. In the proceedings I tried to demonstrate to you that Lieut. Ouellet didn't borrow any money from Corporal Ellis and that he gave him that cheque as a gift. We have the case of an officer who has been with Corporal Ellis for about two months in the mortar platoon at 2 CIRU. Corporal Ellis was kind to Lieut. Ouellet, he made commissions for him, he gave him cigarettes in a few instances. At least he was entitled to receive a gift for his kindness. Before Lieut. Ouellett went away he gave to Corporal Ellis a cheque, on the 20th of July, payable to his name to the amount of £2/0/0. Maybe Lieut. Ouellet didn't know the Corporal would have any trouble with that cheque and when the Corporal told him the trouble he had Lieut. Ouellet told the Corporal he would give him £2/0/0 in cash for the amount of the cheque, which he did in fact. Corporal Ellis may have a good or bad memory, I don't know if he had a bad one, we can't blame him if he did, and maybe the money, the amount of £2/0/0 he is supposed to have given to ~~xxxxxx~~ Lieut. Ouellet was given to somebody else, I don't know. The Corporal didn't remember the date he received the cheque and if he had a good memory he should have known that. The fact that the cheque of £2/0/0 is that sum of £2/0/0 mentioned in the charge as loaned to Lieut. Ouellet it not proof that Lieut. Ouellet has borrowed any money from Corporal Ellis. The cheque is not evidence which tends immediately to prove the charge of borrowing and the evidence should be that cannot lie but they may often deceive, MAL page 81, para 42 and it is what tends immediately to prove it, as shown in MAL page 74, paragraph 15. Facts happened in this case. There is no real proof that Lieut. Ouellet had borrowed any money from Corporal Ellis, so the case is clear. Lieut. Ouellet gave to Corporal Ellis the sum of £2/0/0 by a cheque dated 20th of July, 1943, as a gift for good service and when he was told by the Corporal about the trouble to change it by the paymaster's office he told him he would give him in cash £2/0/0, which he really did. No question of borrowing money is proved in the whole case.

Gentlemen, you have the case in your hands and I have no doubt you will find the charge should be withdrawn against the accused because the case is doubtful and the accused is entitled to the benefit of any doubt you may have.

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SUMMATION BY THE JUDGE ADVOCATE:

May it please the Court, my function as Judge Advocate is to advise you on the law. You and you alone are the sole judges of the facts and if, in the course of my summation, I should make or disclose any opinion on the facts you are to disregard it. The point at issue has turned out to be a simple and definite one. The accused is charged with Conduct to the Prejudice of Good Order and Military Discipline, in that he at Laurentide Camp, Surrey, on or about 7th July, 1943 borrowed the sum of £2/0/0 from a subordinate, K67486, Corporal Ellis, A, Calg Highrs, 2 CIRU. Now, the issue there is plain and simple, did or did not the accused borrow £2/0/0 from Corporal Ellis? You have to judge as to the credibility of the witnesses. It is for you to decide which of them is to be believed, but it is my duty to warn you that the onus of proof is on the prosecution. The accused doesn't have to prove that he is innocent; the prosecution has to prove that he is guilty and if there is a reasonable doubt in your minds he is entitled to the benefit of that doubt. Should you come to the conclusion that money was borrowed it will then be for you to apply your military knowledge and experience to determine whether or not that did or did not constitute conduct to the prejudice of good order and military discipline.

[redacted]

23

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 Lieutenant Charles Eugene Ouellet is guilty of the charge.

R de Chaud, 2 CIRU

Louis Keene Col
President

Mr Tritscaler capt
Judge Advocate

THE COURT BEING REOPENED THE ACCUSED IS AGAIN BROUGHT BEFORE IT.

THE PRESIDENT: The finding of the Court, being subject to promulgation, will not be announced, but will be promulgated later.

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

Proceedings on Conviction *before Sentence.*

Evidence of character, &c.

~~*The Court being reopened the accused is again brought before it.~~

THE PROSECUTOR FILES AFB 355 AND MFM 6 RELATING TO THE ACCUSED, WHICH ARE FORMALLY ADMITTED BY THE DEFENCE.

~~Question to 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 "I" signed by the President, and annexed to the proceedings.

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

~~Question.~~ ~~Have you examined 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 to reason of the nature of the service of the accused in a departmental centre 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.* Through my Defending Officer. (See AAA)

The Court is closed for the consideration of the sentence.

THE PRESIDENT: 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 Lt Charles Eugene Ouellette R de Chaud 2 Cdn Inf Rft Unit to be severly reprimanded and to take rank and precedence in his corps and in the Canadian Army as if his appointment as a Lieutenant bore date 12 Aug 43

Sentence. Severe Reprimand and Loss of Seniority.

Louis Reene Col.
Comd "F" Gp CRU
President.

G E Tritschler Capt.
(Judge-Advocate)

Farnborough, Hants, 12 Aug 43

Confirmed

18 Aug 43.

J. H. Roberts
J. H. ROBERTS, Maj-Gen.,
Comd. Cdn. Rft. Units.

Promulgated and extracts taken at Laurentide Camp, England this 19th day of August 1943

M Greene Col.
Commanding
2 C. I.E.U.

"AA"

PROSECUTOR'S OPENING ADDRESS: The facts in this case speak for themselves. The accused did, on or about 7th July 1943 borrow £2/0/0 from a subordinate, Corporal Ellis, whom I shall produce as evidence. He gave in repayment a post-dated cheque in the amount of £2/0/0, post-dated to the 30th of July 1943. The said cheque is in the hands of the Court and at the time the cheque was presented for payment the accused admitted to Corporal Ellis that his account had been stopped at the Bank. I shall produce as evidence Corporal Ellis.

"AAA"

DEFENDING OFFICERS STATEMENT IN MITIGATION OF PUNISHMENT:

About that statement of character, because I haven't to decide something that has been done in the past by Lieut. Ouellet. By his character statement he has been absent without leave before and he has a severe reprimand for that, because he asked to be dealt with summarily and there was no witness to the case. We didn't go in Court Martial for that so he took the punishment as it was given and if he was AWL I can't go on that because that case is over now, but when he went AWL he had reasons and I wasn't there, because they had no Court Martial on that. And as to character itself I will say that I have been with Lieutenant Ouellet for a long time, in fact we came overseas at the same time. In Canada he has nothing on his crime sheet, or anywhere else against him. He was and is a good officer and he has been with a field unit with me for 7 months and he has always been a good officer. He came back from the unit was was sent to 2 CIRU as special duty for 2 months. He did that perfectly well, because the report he had from there was very good and nobody told anything wrong against him except that AWL, one day and in 6 CIRU he has been for about three weeks now and he has always been a good officer and nothing against him.

Army Form A 47

27

COURTS-MARTIAL

Form of Order for the assembly of a General or District Court Martial.

ORDERS BY Maj-Gen. J.H. Roberts, D.S.O., M.C.

Commanding the Cdn Rft Units, Cdn Army Overseas.

(Place and Date) Farnborough, Hants., 9 Aug 43.

The detail of officers as mentioned below will assemble at Oudenarde NAAFI Reading Room, Farnborough, Hants. on the 12th day of August, 1943 at 1000 hrs. for the purpose of trying by a General court-martial the accused person ~~[persons]~~ named in the margin [and such other person or persons as may be brought before them].*

Lt Charles Eugene OUELLET, R de Chaud, 2 Cdn Inf Rft Unit.

PRESIDENT.

Col. Louis Keene, E.D. Comd F Gp. is appointed president.†

MEMBERS.

Lt-Col G. F. Clingan, MC, ED. CH of O.	5 CIRU.
Major N.D. Theobald, MC. Westmr Regt.	5 CIRU.
Major J.G. Perrigard, CAC.	2 CACRU.
Capt. H.W. Gauthier, CAC.	2 CACRU.

NOTE—The president must be named. The members and the waiting members may be mentioned by name, or the number and ranks and the unit‡ to which they belong may alone be named.

"of"

Louis Keene Col President

Lt Tritschler Capt Judge advocate.

WAITING MEMBERS.

Major O.C. O'Connor-Fenton, H&PE Regt.	5 CIRU.
Major J.P. Gautier, CAC.	1 CACRU.

JUDGE-ADVOCATE.

Capt G.E. Tritschler, Barrister-at-Law, HQ CRU. ~~has been [or where the convening officer has the appointment of a judge advocate~~, 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 CRU.

Signed this Ninth day of August 1943

J.H. Roberts

(J.H. Roberts) Maj-Gen.,
Comd, Cdn Rft Units.

* *Any opinion of the convening officer with respect to the composition of the Court (see Army Act, s. 48 (10) and Rules of Procedure 20 and 21) should be added here; thus, where a Court-Martial is ordered to assemble, composed exclusively of officers of the same regiment of cavalry, or the same brigade of artillery, or the same battalion of infantry, the following should be added:—*

"In the opinion of the convening officer, other officers are not, having due regard to the public service, available," *(or as the case may be).*

† *Add here, in the case of either a General or District Court-Martial where a captain is appointed president and the officer convening the court is not under the rank of field officer,* "In the opinion of the convening officer a field officer is not, having due regard to the public service, available." *Where it is necessary for an officer under the rank of captain to be appointed president of a District Court-Martial, add,* "In the opinion of the convening officer a field officer or captain is not, having due regard to the public service, available." *(See Army Act, s. 48 (9).)*

‡ *The "unit," in the case of Royal Artillery, is a Brigade, where such organisation exists.*

(13409) Wt.55684/1691 10,000 11/39 A.& E.W.Ltd. Gp.698
(13380) Wt.44907/728 40,000 1/40 " " Forms/A47/42

List of Witnesses.

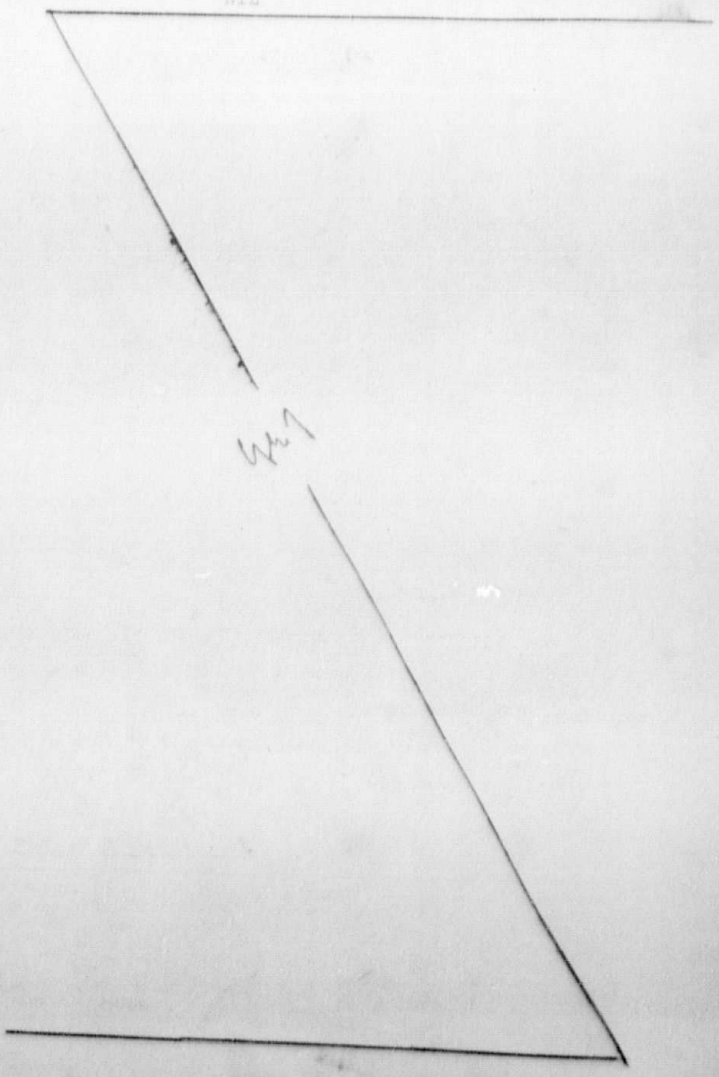
TRIAL OF Lt Charles Eugene OUELLET, R de Chaud.
2 Cdn Inf Rft Unit.

PROSECUTION

K-67486 Cpl Ellis, A. 2 CIRU.

DEFENCE

NIL



7546

No. A907114 London. 20th July 1943

Bank of Montreal

9, WATERLOO PLACE, PALL MALL, S.W.

Pay To K 67486 Cpl. Ellis A. or Ord.

The Sum of two Pounds

A/c No

L 2-0-0 66 [illegible] Charles Eugene Chelleh Lt

R.E. THOMAS & NEWMAN LTD.

7546

No.A 907114

LONDON, 30th July 1943.

BANK OF MONTREAL,
9 WATERLOO PLACE, PALL MALL, S.W.

Pay to K-67486 Cpl. ELLIS A. .....or Order

the sum of two pounds.....

£2-0-0

A/c No. 66109

"Charles Eugene Ouellet" Lt.

31

No. Lieut. Name C.E. Ouellet | Sqn., Battery, or Company Regt. de la Chaudiere Corps Infantry | Date of enlistment 6 Oct 41 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F. B.122) 40/P & /S136 (2965)

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. W.E. Morgan, Col. | Character Good

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	10 Jul 43	Lieut.		W.O.A.S., A.W.L. from 0200 hours 10 Jul 43 to 1015 hours 12 Jul 43. Total absence 2 days, 8 hrs., 15 min. A.A. Sec. 15 (1)	Capt. D.A. Hambleton (PAV) Capt. E.R. Young (CIC	Severe Reprimand	19 Jul 43	Maj.Gen. J.H. Roberts DSO MC	10 days forf. of pay W.E.M.

Certified true copy of the original held in my possession.

..... Records Officer

12 AUG 43

(P.T.O.)

M.F.B. 28
22M—5-41 (372-8)
H.Q. 1772-89-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
	Lieut.	Charles Eugene OUELLET	R. de Chaudiere

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 ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.W.L.	1 times	A.W.L.	1 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 Nil days in civil custody, and Nil days in military ~~Air Force~~ 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 is ~~attestation paper is~~ 22 ~~1~~ years ~~10~~ months

6. The date of his commission specified in his record of service is ~~attestation~~ ~~attestation paper~~ 6 Oct 1941

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 (~~or 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 the regimental rank of~~ ~~Air Force~~

35

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

I certify that I have this morning examined Lieut. Charles Eugene OUELLET of (R. de Chaud.) 2 C.I.R.U. and in my opinion he is ~~fit~~ ~~unfit~~ to undergo trial by Court Martial.

Station: Laurentide Camp

Date. Aug 43

[signature] Capt [illegible]
Medical Officer
#2 CMC

Louis Queene Col.

Ex 7

SUMMARY OF EVIDENCE

in the case of

Lieutenant Charles Eugene OUELLET, Regiment de la Chaudiere, attached to 2 Canadian Infantry Reinforcement Unit, an officer of the Canadian Army placed on Active Service

Charge

Conduct to the Prejudice of Good Order and Military Discipline.

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

FIRST WITNESS

K-67486 Corporal Ellis, A. (Calgary Highlanders) 2 C.I.R.U., having been duly sworn states:-

"Sir, I am K-67486 Cpl. Ellis, A. (Calgary Highlanders), 2 C.I.R.U. On or about 7th July, 1943, Mr. Ouellet told me that he was going to London on a week-end, but that he was short of money. I told him that I did not have much money, but I could lend him £2:0:0 and he gave me a cheque for this amount. I went to the Paymaster of 2 C.I.R.U. on the 30th July, 1943 to cash this cheque, but he told me he would not cash a cheque payable to a second party; then I asked Capt. Digby what was the best way to cash an officer's cheque. Another Officer who was present at that time, I think a Major from "A" Group, asked to see the cheque and told me that the best way to settle the matter was to see Mr. Ouellet and get the cash from him, and return the cheque to him. I saw Mr. Ouellet on 31st July, 1943, and I told him what this Officer said. Mr. Ouellet told me that his bank account had been closed while he had been under arrest in this Camp and had not yet been opened, but he hoped it would be opened by the middle of next week. On 4th August 1943 Mr. Ouelett repaid me the sum of £2:0:0 in cash.

.....
K-67486 Cpl. Ellis, A.

The accused declines to cross-examine.

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 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 Laurentide Camp, Witley, Surrey, this 5th day of August, 1943.

.....
(J. A. Courts) Capt.
2 C.I.R.U.

67

L. C. M.-A.-31
Lieut. Pruellet, C. E.

Mem-A-31

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

A

Army Form A 9.

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

19 Jan 44

Proceedings of a General Court-Martial held at Witley, Surrey on the 19th day of January 1944 by order of

Maj-Gen J.H.Roberts DSO MC

G.O. Commanding Cdn Rft Units, Cdn Army Overseas

dated the 13th day of January 19 44

President.

Brig. G. Francoeur CBE VD Comd "D" Gp

Members.

Lt-col J.W.G. Thompson MM, ED RCA 2CARU

Major J.G. Perrigard CAC 2 CACRU

Major J.C. Ferguson RCOC 1 CORU

Capt F.R. Plourde CIC 7 CIRU

WAITING MEMBERS

Major H.I.T. McLeod CAC 1 CACRU

Capt V.F. Menard RCA 2 CARU

Capt W.R.Marshall, Barrister-at-Law HQ CRU , Judge Advocate.

Trial of* Lieut Charles Eugene Quellet, Regiment de la Chaudiere, 6 CIRU, an Officer of the Canadian Army Overseas.

PROCEEDINGS REVIEWED
[signature] Capt
31 Jany 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

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 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut M.P. Menard, R de Mais, 6CIRU

Counsel‡ or defending officer† Lieut A. Letarte R 22 R 6CIRU

At 1000 o'clock the Trial commences.

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

The Prosecutor produces the Medical Certificate which is attached.

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.

Q4274. Wt.W16854/78. 35,000 sets. 6/40. K. & H., Ltd. G657/11. Forms A 9/55.

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

J.A.:" Do you object to Cpl Vanier acting as shorthand-writer?" Ans:" No, Sir."
W-15120 Cpl T.M. Vanier, HQ CMU duly sworn as shorthand-writer.

The following officers under instruction are duly sworn.

Lt L.P. Bergeron	FMR	6CIRU	Lt L. Savard	CIC	6CIRU
Lt Y.A. Jasmin	CIC	"	Lt C. Matte	CIC	"
Lt R. Lepage R de M		"	Lt L. Lessard	CIC	"
Lt B. Lapointe	CIC	"	Lt F. de S. Robert R de Mais		6 CIRU
Lt O.M. Lacroix	CIC	"	Lt R. Jalbert	R 22 R	"
Lt D.L. Bastien	CIC	"	Maj H.I. T McLeod	CAC 1 CACRU	
Lt G.H. Coulombe	CIC	"	Capt V.F.Menard	RCA 2CARU	

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, sir. *Answer.*

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

J.A.:" Do you wish to have an interpreter or can you speak and understand English? If at any time you need an interpreter would you make a request to the Court." *Answer.*
Answer :"I can understand and speak English and do not need an interpreter."

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 charge , the provisions of Rule of Procedure 35 (3) 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.*

ARMY FORM A 47

COURTS - MARTIAL

FORM OR ORDER FOR THE ASSEMBLY OF A GENERAL OR DISTRICT COURT MARTIAL

.....ORDERS BY....Maj Gen J.H.Roberts DSO MC.....

G.O.Commanding the ..Cdn Rft Units.....

(Place and Date). Farnborough, Hants,.....

The detail of officers as mentioned below will assemble at the NAAFI, 6CIRU, Whitley, Surrey.....on the..19th..day of...January..1944 at 1000 hrs for the purpose of trying by a General..court-martial the accused person (~~persons~~) named in the margin (and such other person or persons as may be brought before them)

Lieut Charles Eugene OUELLET

Regiment de la Chaudiere, 6 CIRU

PRESIDENT.

Brig G. Francoeur OBE,VD,Comd "D" is appointed president

MEMBERS

Lt-col J.W.G. Thompson, MM, ED,	RCA, Gp, CRU.	2 CARU
Major J.G. Perrigard	CAC	2 CACRU
Major J.C. Ferguson	RCOC	1 CORU
Capt F.R. Plourde	CIC	7 CIRU

WAITING MEMBERS.

Major H.I. T. McLeod	CAC	1 CACRU
Capt V.F. Menard	RCA	2 CARU

JUDGE-ADVOCATE.

Capt W.R.Marshall, Barrister-at-law, HQ CRU / ~~has been (or where the convening officer has the appointment of a judge-advocate~~, 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 CRU

Signed this thirteenth day of January 1944

(J.H.Roberts) Maj Gen
G.O.C. Cdn Rft Units
CONVENING OFFICER

3

CHARGE SHEET

The accused, Lieutenant Charles Eugene OUELLET, of Le Regiment de la Chaudiere, on the strength of No 6 Canadian Infantry Reinforcement Unit, an officer of the Canadian Army Overseas, is charged with:

FIRST CHARGE
SEC. ICA 15 (1)
ARMY ACT

WHILST ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

at Algonquin Camp, Witley, Surrey, did absent himself without leave from 1700 hours on the 6th day of January, 1944, until 0930 hours on the 7th day of January, 1944.

(Total absence: 1 day, 16 Hours).

(J. GAVAN POWER), Lt/Col.
A/Commander,
6 Cdn Inf Rft Unit.

Witley, Surrey,
7 Jan 44.

TO BE TRIED BY GENERAL COURT MARTIAL

(J.H.Roberts)Maj - Gen
GOC Cdn Rft Units
CONVENING OFFICER

In the Field
13 Jan 44

B2

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

4

I certify that I have this morning examined No Lieut Charles E. Ouellette
(Rank) (Name)

of No 6 - C I R U and in my opinion he is fit to undergo
~~unfit~~

trial by C ourt Martial.

Station Willey Surrey

Date 19th day of Jan 44

CAPT. J. L. A. HURTEAU, M.O.
R.~~C.A.M.C.~~

Sgd J. L. A. Hurteau Capt.
(Medical Officer)

CAPT.,
MEDICAL OFFICER, 6 C.I.R.U.

G.S.

5

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, sir.

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

The prosecutor proceeds to call witnesses.

First witness for prosecution. Capt D.H. Vermette CIC 6CIRU having been duly sworn is examined by the Prosecutor:

~~being duly sworn, is examined by the prosecutor.~~

Q.1. Will you give your name and appointment to the Court?
A.2. I am Capt D.H. Vermette, CIC, 2 i/c "F" Coy and in charge of R.U. Officers in that Coy, 6CIRU.
Q.2. Do you know the accused?
A.2. Yes, I do.
Q.3. Will you tell the Court what you know of the Charge against him?
A.3. The accused proceeded on 14 days leave from 22 Dec 43 at 1700 hrs to 5 Jan 44 at 1700 hrs. He reported to me only at0900 hrs on 7 Jan 44.
Q.4. Will you produce the exhibit?
A.4. This is an application for leave signed by Lt Ouellet and marked Exhibit "A".
Q.5. What proceedure should an officer at this camp follow when reporting from leave?
A.5. He should report on the next parade after arriving in camp.

CROSS EXAMINED BY THE DEFENCE:

Q.6. Capt Vermette, you said that Lt Ouelet was to appear only on the next parade, so would you tell the court when was the next parade?
A.6. At 0845 hrs 6 Jan 44.
Q.7. Did you happen to see Lt Ouellet on that date?
A.7. Yes, I saw him in the Mess at 1800 hrs.
Q.8. So as far as you are concerned Lt Ouellet was absent from 0845 hrs until you saw him in the Mess that night?
A.8. No because he was supposed to report in the morning and the next parade was on 7 Jan 44.
Q.9. But he was absent from 0845 hrs?
A.9. Yes.
Q.10 And you saw him at 1800 hrs in the Mess that night?
A.10 Yes.

RE-EXAMINED BY THE PROSECUTION:

Q.11 When you saw him in the Mess, did you speak to him?
A.11 Yes, I.....

DEFENDING OFFICER: If you will permit me I was only asking him about the encounter in the Mess so.....

JUDGE ADVOCATE: The proceedure is that the witness may be cross-examined by the Defence and then re-examined by the Prosecution on any new evidence brought out by the Defence.

Q.12. Did you talk to the accused in the Mess?
A.12. Yes, he told me he thought his leave was ending on 6 January at 1700 hrs instead of on the 5 January.
Q.13. By the fact that you had seen him and talked to him, did you consider him as back from leave?
A.13. No, I had told him to report to the Company office. For the Coy he was absent without leave.

EXAMINED BY THE COURT:

Q.14. This statement made by the accused that he thought his leave was ending 6 January and not 5 January, was this a voluntary statement?
A.14. I told him he was AWL, it was in answer to my remark.
Q.15. Do you mean to tell me that if the accused was seen at 0900 hrs and if you saw him coming away from the parade at 0945 hrs he was still AWL until the next parade?
A.15. The regulation is that he must report at the next parade.

Q.16. If you don't see a man on parade is that enough to say he is AWL?
A.16. No, I don't think so.

JUDGE ADVOCATE: The case for the Prosecution is now closed. You will now proceed with your defence. You may give evidence on oath as to the facts or your character or both. You may make a statement not on oath, but a statement made on oath will carry more weight with the Court. If you made statements on oath you are subject to cross-examination. You may also call witnesses as to facts and as to character.

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. Yes, sir.

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

No, sir, fact and character.

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?

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.]

Instruction.

† 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*.)

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.

1st Wit) The accused , Lieut Charles Eugene OUELLET, R de la Chaudiere
for the 0 6 Cdn Rft Unit, having been duly sworn states:
Defence)

I knew that my leave was ending on 5 Jan at 1700 hrs so I went to the station to take the last train from Shoreham to the Camp. I went to the station at 2000 hrs 5 January. I meant to catch the 2027 train . I sat on a bench in the station there and went to sleep. When I woke up the train had left. So I thought I must catch an early train in the morning from Shoreham to Haven and from Haven I caught a train to Milford. At Milford I found an army truck waiting for two officers. I got into the truck with them but we had to wait another quarter of an hour as the driver said he was expecting more officers. Then we went to the camp. I went to my room to change as I was in service dress. When I got to my room it was 1400 hrs in the afternoon. I had to look for my trunk which had been sent to be repaired. In the end I found the trunk, put on my serge and as it was about 1630 hrs or 1700 hrs I just went to the Mess and there I saw Capt Vermette, who was 2 i/c my Coy.

EXAMINED BY THE DEFENCE:

Q.17. Did you see and speak to any officers in authority over you when you were in the Mess?
A.17. Yes, I spoke to my Adjutant, Capt Scott, Adjutant of "H" Wing.
Q.18. How long have you been in the Army?
A.18. Since July 1941.
Q.19. How old are you?
A.19. Twenty-two.
Q.20. What were you before joining the Army?
A.20. I was studying at College.
Q.21. Will you tell us what you did after joining the Army?
A.21. I joined as a 2/Lt and was sent to Brockville. I used to be in the non-permanent active militia. I was given the rank of Lieut and sent to do basic training and after that I went to Megantic on the junior leaders course, and then came overseas.
Q.22. You went on the junior leaders course as an instructor?
A.22. Yes, as an instructor.
Q.23. When did you come overseas?
A.23. On 9 Oct 42.
Q.24. On 9 Oct 1942, what did you do then?
A.24. I was with the Chaudiere Regiment for 9 months. I had passed all the courses, trench mortars course, gas course etc.
Q.25. Do you know your qualifications after these courses?
A.25. Yes, all Q1.
Q.26. What did you do then?
A.26. I then went to 6 CIRU and was eventually sent to 2 CIRU as i/c the Trench Mortar School there, and then I was sent back to 6 CIRU.

CROSS EXAMINED BY THE PROSECUTION:

Q.27. At what time was your leave due to end?
A.27. At 1700 hrs.
Q.28. And yet you took the last train at 2027 hrs to Milford?
A.28 Yes.
Q.29. You said you arrived in Camp at 1400 hrs 6 January. Why did you not report immediately on arrival?
A.29. I wanted to report in battle-dress. I hunted for my trunk and changed and then found it was too late.

QUESTIONNED BY THE PRESIDENT:

Q.30. Lt Ouellet, you say that you went to the station at 2000 hrs on 5 Jan 44 knowing that you should be back in camp at 1700 hrs?

A.30. I thought an officer could come back at any time as long as he was back in the morning for the parade.
Q.31. You have been in the Army for Three years and you tell me that is what you thought?
A.31. Yes. In this camp, an officer is free after about 1700 hrs, until about 0845 hrs in the morning.
Q.32. And you were back from 14 days leave?
A.32. Yes, sir.

JUDGE ADVOCATE:

Q.33. What train should you have caught to get you back at 1700 hrs?
A.33. The 1439 train, sir.
Q.34. Instead of that you went to the station to catch the 2027 train which would have got you to 6 CIRU at what time?
A.34. At 2300 hrs or 2330 hrs.
Q.35. Did you make any endeavours to telephone the camp and say that you would not be back?
A.35. No, sir, I did not, I thought I could catch the early train next morning.
Q.36. What train did you catch?
A.36. I took the 0827 train.
Q.37. What time did that get you to the camp?
Q.37. At 1400 hrs.
Q.38. How far are your quarters from the company office?
A.38. About five or ten minutes walk.
Q.39. You did not go to the company office?
A.39. No, sir.
Q.40. You met Capt Scott in the Mess? Did he say anything to you?
A.40. He told me that I was AWL.

PRESIDENT:

Q.41. You knew you were AWL?
A.41. Yes, sir. This is what I had told my Colonel when I was paraded in front of him.

BY THE COURT:

Q.42. When you came back from your leave, were you advised that you had missed any duties assigned to you?
A.42. No sir.

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

Second Witness for the Defence) Capt R.W. Scott, CAC, Administrative Officer of "H" Wing, 6CIRU. being duly sworn is questionned by the Defence:

Q.43. Do you know the accused?
A.43. Yes, I do.
Q.44. Would you tell the Court what you know regarding the accused's absence?
A.44. I saw him on 6 January at 1640 hrs in the Mess.
Q.45. Do you know the accused well?
A.45. Yes, I do.
Q.46. Do you know him as a good officer, will you tell the Court what you know of him in this respect?
A.46. He has a good conduct sheet and is a reliable officer.
Q.47. Has he ever been absent or late to your knowledge before this occurence?
A.47. Not to my knowledge.
Q.48. Will you tell the Court how the accused was dressed that night?
A.48 In Battle-dress.

THE PROSECUTION DECLINES TO CROSS EXAMINE THIS WITNESS.

BY THE COURT:

Q.49. Was the accused posted to any duties before 1400 hrs on 6 January?
A.49. No, sir.
Q.50. Did he miss any duty by his absence?
A.50. No, sir.
Q.51. Could he have been posted for some duties?
A.51. Yes, sir, from the day before.
Q.52. In that case, he would have missed those duties?
A.52. Yes, sir.
Q.53. When an officer's leave finishes at this Camp does he report in the morning or in the evening? What is the proceedure with regard to
A.53. We have a special form on which an officer applies for / leave? his leave which he hands in.
(Exhibit "A" is shown the witness and recognised by him)
Q.54. What does he do with that form?
A.54. It comes to my office, the Coy Commander approves it first and then it comes to "H" Wing.
Q.55. And you pass it on to the CO "H" Wing?
A.55. Yes, he approves it too.
Q.56. What happens to it then?
A.56. It is passed to records to check if the Officer is entitled to leave and then goes to the Col in command of the camp.
Q.57. When it is signed, is the officer notified by you?
A.57. He is now, but up to now the practice has been for the officer to go to Records to find out.
Q.58. What happens to the application form?
A.58. It stays with Records.
Q.59. When an officer comes back from leave at 1700 hrs what does he do according to your regulations?
A.59. He is supposed to report to Records, but the offices are usually closed at that hour.
Q.60. But surely there is always someone at Records?
A.60. Yes.
Q.61. And an officer must check in at Records even if the Records Officer is not there?
A.61. He is supposed to report to the Records Officer.
Q.62. Yes, but if he is not there, to whom does he report?
A.62. To his company commander.
Q.63. If an officer's leave finishes at 1700 hrs is it recognised that he may stay over until 0845 hrs the next morning?
A.63. If an officer's leave finishes at 1700 hrs he should be back at that time.
Q.64. And at that time, when he reports if there is no Records Officer present he reports to his Company Commander?
A.64. That is right.
Q.65. And he should be on parade at 0845 hrs the next morning?
A.65. Yes, sir.
Q.66. Supposing he did not report in the evening, and reported at 0845 hrs on parade the next morning, would he be considered absent?
A.66. It would be the job of the Company Commander to investigate first and see if he were in.
Q.67. And if it were discovered that he had been absent?
A.67. Then he would be paraded before the Colonel and charged with AWL.
Q.68. Do you know whether any cases have arrisen of Company commanders investigating at this hour?
A.68. I said it was supposed to be done, but I have not known of a case similar to this before.
Q.69. Is after 1700 considered free to officers in this camp?
A.69. To my knowledge all officers have been back at the hours appointed.
Q.70. If an officer appeared at the parade at 0845 hrs would he be charged with absence if he was supposed to be in at 1700 hrs the night before?
A.70. Well, his leave would finish the day before. As far as I remember this is the first case....
Q.71. Is an officer's time his own until 0845 hrs in the morning?
A.71. According to regulations there are no sleeping out passes, so he is not free.

Q.72. But his time is his own?
A.72. Yes, sir.
Q.73. Can an officer sleep out without permission?
A.73. No, sir.
Q.74. Is it being done?
A.74. Yes, sir, they sleep out on 48 or 36 hrs passes.
Q.75. Are there officers who sleep out without permission?
A.75. No sir.
Q.76. Have you a signing out book for officers going out?
A.76. Yes, sir.
Q.77. Do the officers sign out?
A.77. Very few do it sir.
Q.78. The fact that an officer comes back at 0845 hrs the next morning does not mean that the officer necessarily slept out?
A.78. No, sir.

JUDGE ADVOCATE:

The case for the Defence is completed. The procedure now is that as the accused gave evidence on oath and called witnesses, the Defence will give the closing address first and then the Prosecution will give the closing address.

CLOSING ADDRESS BY DEFENDING OFFICER :

Mr President & Gentlemen of the Court: The facts as we have them are not to prove Lt Ouellet AWL. Capt Vermette the only witness for the Prosecution admitted that the accused was not AWL as the charge shows him. The accused comes up under oath and tells you the facts that may have happened to any of usAfter coming to the station at 2000 hrs, he went to sleep and woke up when the last train was gone. He then took the earliest train in the morning. In this case the accused did come back just as so n as he could. He gets in camp by 1400 hrs. By the time he finds his trunk and changes into battle-dress it is the end of the parade. So he goes in the Mess where he meets the Adjutant of the Wing he belongs to and a few other officers.

May I refer you to AA Sec 15 note 1, para 5. It says "Involuntary absence due, for example, to illness or arrest by the civil power, is not ordinarily an offence under this section.. .Where the absence was originally voluntary and subsequently becomes involuntary, the length of the absence without leave must be reckoned only to the time when the absence becomes involuntary, and conversely." Lt Ouellet's absence was involuntary, and involuntary absence due to missing a train cannot be charged under this section. Further on in this note we see that the absence should start only when the accused failed to come back. In this case the accused did try to come back as soon as he could.

I am sure that your sence of justice will acquit the accused. I could have brought a lot of other witnesses to show that the facts are correct, who saw him in his room and in the mess, and other witnesses as to character, but I simply find there is no need. Lieut Ouellet is an old soldier and his knowledge of all the branches required to a platoon commander make him a valuable officer. I am sure you will not want to put anything against him in his records for such a small thing. Thank, you, Gentlemen.

CLOSING ADDRESS BY THE PROSECUTION:

I want to refer to para 5 mentioned by the Defending Officer. There are a line or two which he did not read. "Absence originally involuntary may become an offence under this paragraph if the person charged fails to return to duty at the earliest possible moment." The accused did not report at 1400 hrs when he got back to the camp but whent to his room and took time to change his dress and then it was too late to report to the Company office. The proof brought up by Capt Vermette was clear and the accused simply overstayed his leave. Exhibit "A" shows you the time and date the accused's leave was ending. Capt Vermette said the accused reported at 0900 hrs 7 Jan 44.

That is all I have to say and it is up to the Court to decide upon the evidence. To decide if the accused is to be found guilty of the charge against him is up to you Gentlemen, Thank you.

Defending Officer: Can I say something please?

JUDGE ADVOCATE: The procedure is laid down under RP 40 and 41. Where the accused gives evidence as to facts and calls witnesses the Defending Officer gives the closing address first followed by the Prosecuting Officer. If the accused only gives evidence himself the prosecutor gives ~~evidence~~ first, then the Defence.

SUMMING UP BY JUDGE ADVOCATE:

The Charge Sheet says the accused went absent from 1700 hrs 5 Jan 44 until 0900 hrs 7 Jan 44. The facts are simple. You have heard the evidence and explanation on the part of the accused. The charge of absence without leave is that the person charged was absent when he should have been present from the time stated. It is for the court to decide the value of the facts alleged. It is my duty as Judge Advocate to direct the Court on question of law. There are few questions on law in this case.

If there is any doubt at all in the minds of the Members of the Court as to the charge being proven then that doubt must be used in favour of the accused. If the Court consider that the Prosecution has satisfactorily proved its case, then the accused must be found guilty. If the Court find on the contrary that the Prosecution has not proved the point, then the accused must be acquitted. If there is some doubt in the minds of the Court, I repeat, that doubt must be brought forth in favour of the accused.

COURT CLOSED TO CONSIDER THE FINDING.

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 Lieut Charles Eugene Ouellet, Regiment de la Chaudière, 6 CIRU is guilty of the First charge except that the time of absence without leave is from 1700 hrs 5 Jan 44 until 1640 hrs 6 Jan 44

W Hellarshall Capt
Judge Advocate

G Franklin BRIG.
President

In The Field
19 Jan 44

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

Proceedings on Conviction before Sentence.

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it. ORO 3262 is complied with by the President, respecting Confirmation. 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.*

Prosecuting Offr produces MFB 355 and MFM 6.

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

PLEA IN MITIGATION

Mr. President, I have only to ask for the clemency of the Court regarding Lieut Ouellet. He is a good and fully trained soldier. He is qualified in all the branches in which a platoon commander should be qualified. He has served for three years in the army. Having made so few mistakes in the past years, I now call for the clemency of the Court and I am sure that the Court will take into consideration the services of the accused and all his qualifications.

[signature]

F

Sentence.

The Court sentence the accused Lieut Charles Eugene Bennett, Regiment de la Chaudiere, 6 C.I.R.C., to be severely reprimanded and to lose rank and precedence in his Corps and in the Canadian Army as of his appointment as Lieutenant bore date the 19th day of January 1944.

Sentence.

Severe Reprimand
loss of Seniority
& Rank.

W.R. Marshall Capt
Judge Advocate

In the Field
19 Jan 44.

[signature]
President

BRIG.

CONFIRMED

In the Field
20 Jan 44

[signature]
(J.H. Roberts) Maj-Gen
GOC
Cdn Rft Units

PROMULGATED

In the Field
21 Jan 44.

[signature]
COLONEL,
COMD., 6 CDN. INF. RFT. UNIT

ARMY FORM B.296.

12

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
	Lieutenant	Charles Eugene OUELLET	Le Regiment de la Chaudiere.

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. 877, S.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.
A.D. ~~For~~	~~times~~	~~times.~~ A.D.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct,

or

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

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

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. A.D. ~~or The accused at the present time is under sentence for~~ A.D. ~~beginning on the day of~~ A.D.

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 8 days in military custody, making a total of 8 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 22 years

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 6 Oct 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs 86 days

8. The accused is entitled to deferred pay or gratuity in respect of 2 yrs 86 days service.

9. The accused is entitled to reckon 2 yrs 86 days 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)~~). A.D.

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

12. (*In the case of an officer.*) The accused holds in the army the rank of Lieutenant, dated 12 Aug 43 and in his regiment (*or* corps *or* department) the rank of Lieutenant dated 12 Aug 43.

(*18230) W.C.15852/144 125,000 6/41 A.&E.W.Ltd. Gp.498

Y

G.F.

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. _____ Rank Lieutenant Name Charles Eugene OUELLET of Regt de la Chaud 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.
Maj-Gen	Field 19 Jul 43	A.A. 15 (1) AWL	Severe Reprimand	
G.C.M.	Field 12 Aug 43	A.A. 40	Severe Reprimand & Loss of Seniority	

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 19th day of January 1944

for officer having custody of original documents.

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

In the rank of _____ years, _____ 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, 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 paragraphs concerned amended accordingly.*)

Lieutenant

No Name C.E. OUELLET Sqn, Battery, or Company Corps Regt. de la Chaud. Date of enlistment 6 Oct 41 GC Badges n/a Service or Proficiency Pay n/a

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

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 W.E. Morgan Character A/Col.

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 10 Jul 43		Lieut.		A.A. 15 (1) AWL from 0200 hours 10 Jul 43 till 1015 hours 12 Jul 43 (2 days, 8 hours, 15 minutes)	Capt. D.A. Hambleton Capt. E.R. Young	Severe Reprimand	19 Jul 43	Maj-Gen J.H. Roberts DSO, MC.	Forf 3 days pay for AWL and 7 days pay for time in [illegible]
Field 7 Jul 43		Lieut		A.A. 40 Conduct to the Prejudice of Good Order and military dicipline. (borrowed £2.0.0 from a subordinate giving him a personal post-dated cheque for that amount).	Documentary Cpl Ellis A	Severe Reprimand & Loss of Seniority	12 Aug 43 Confirmed by Maj-Gen J.H. Roberts DSO, MC. 18 Aug 43	G.C.M.	[illegible] Barrett Capt
				Certified true copy consisting of one sheet dated: 4 Jan 44		[illegible] Barrett Capt officer having custody of original documents.			

(PTO)

14

SUMMARY OF EVIDENCE

In the Case of Lieutenant Charles Eugene OUELLET, of Le Regiment de la Chaudiere, on the strength of No 6 Canadian Infantry Reinforcement Unit, an officer of the Canadian Army Overseas.

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

FIRST WITNESS FOR THE PROSECUTION

Capt. D.H. Vermette, of the Canadian Infantry Corps, on the strength of 6 CIRU, having been duly sworn, states as follows:

I hereby produce as Exhibit "A" a Leave Application, signed by the accused, and approved by the Commanding Officer of 6 CIRU. Lt. Ouellet, whom I now recognise, proceeded on 14 days'leave on 28 Dec 43 at 1700 hrs. He was due to return on 5 Jan 44 at 1700 hrs. Lt Ouellet did not return at the time of expiration of his leave. He reported back to me at 0900 hours on 7 Jan 1944, upon his return.

The accused declines to cross-examine this witness.

D.H. Vermette .....Capt.

The accused is then cautioned in French as follows: "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you may say or any evidence you may give will be taken down in writing and may be used 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 ( ) have been duly complied with.

W.P. Menard .....Lt.
Officer detailed to take the Summary of Evidence.

Algonquin Camp,
Witley, Surrey,
7 Jan 44.

WPM/JIN

NO. 6 CANADIAN INFANTRY REINFORCEMENT UNIT

EXHIBIT "A"

LEAVE APPLICATION

NO. _____ RANK Lieut NAME C. E. Ouellet (Bdch) DATE 8 Dec 1943

TYPE OF LEAVE Privelege NO. OF DAYS 14 X

FROM 17 00 HOURS 22 Dec 43 TO 17 00 HOURS 5 Jan 44

ADDRESS DURING LEAVE Shoreham-by-Sea 12 Oxen Avenue

February 43 DATE OF LAST LEAVE No does to check

ENTITLED TO LEAVE _____ CHECKED _____

ENTITLED TO WARRANT _____ CHECKED _____

RATION CARD NO. _____ R.R. DESTINATION Shoreham-by-Sea

RECOMMENDED Pure Rosenger Maj
O.C. F COY

Charles Eugene Ouellet Lieut
SIGNATURE OF APPLICANT

RECEIVED R.R. WARRANT & RATION CARD

X

SIGNATURE

RECEIVED
6 JAN 1944
Records Office
6 C.I.R.U.

APPROVED C.M. [signature] A
OFFICER COMMANDING COLONEL,
COMD. 6 CDN. INF. RFT. UNIT
NO. 6 CDN INF REINF UNIT

YYY-53

Pte Ouellette E. J.

4

SCHEDULE.

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

Accused: C-94605 Pte Edward Joseph Oullette 1 Cdn Corps Tps Sub PK RCOC

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	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, 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 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 120 days.

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

24 Aug 44. Date awarded.

(Sgd) (J J Legate) 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 152, 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 findings but vary the sentence so that it shall be "To undergo Eighty days detention" and I confirm the punishment and I direct that Ninety days pay, and emolument and I direct that the period [illegible] (1. AA 57A. Delete if not used.) shall be forfeited. Seal

The sentence as so varied.

(Sgd) T. A. McCusker Brig

Date 27 Aug 44 Commanding DDMS 1 Cdn Corps Confirming Officer.

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

Accused: C94605 Pte EDWARD JOSEPH OUILLETTE

Date: 27 AUG 44

Signature of Offr: A G DeWolfe Lieut.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 180 YYY-58

RECEIVED 6 OCT 1944 CMHQ BRANCH

FIELD GENERAL COURT-MARTIAL

Convening Order of Brig E A McCusker Comd DDMS 1 Cdn Corps dated 21 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) 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.
C-94605	Private	Edward Joseph	OULLETTE	1 Cdn Corps & Army Tps Sub PK RCOC

PROCEEDINGS REVIEWED 6 Oct 44

[signature] Lieut

REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date) 24 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 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 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 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 69(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. J. Legate	Hqrs RCEME 1 Cdn Corps Tps
Member	Capt.	J. W. R. Shaw	1 Cdn Corps & Army Tps Sub PK RCOC
Member	Lieut	J. E. Bell	HQ. 1 Cdn Corps Ord Pk RCOC
Judge-Advocate			
Prosecutor	Lieut	A. G. DeWolfe	1 Cdn Corps & Army Tps Sub PK RCOC
Defending Offr	Lieut	M. Orenstein	1 Cdn Officers Shop RCOC

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 (8) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... 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 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 .....

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 plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) as for 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 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 two ..... 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 two ..... 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. I wish to give evidence on oath. 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(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part II 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 "A" and Ex "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)
(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(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. C-94605, Private Edward Joseph Ouellette, 1 Cdn Corps & Army Tps Sub P ark, RCOC, a soldier of the Canadian Army Overseas, is charged with:-

WHILST ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he

FIRST CHARGE
Section 40
Army Act

In the Field in Italy, on the 15th day of August 1944, became unfit for duty by reason of previous indulgence in alcoholic stimulants.

WHILST ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he

SECOND CHARGE
Section 40
Army Act

In the Field in Italy on 18 Aug 44 while under open arrest awaiting Field General Court Marshal on a charge of being unfit for duty by reason of previous indulgence in alcoholic stimulants, approached Major G.A. Brass of 3 Cdn. Dental Coy and improperly requested him to give false testimony at his trial.

In the Field
18 August 44

(P.M. Irwin) Major
Officer Commanding
1 Cdn Corps & Army
Tps Sub Park, RCOC.

To be tried by Field General Court-Martial.

(E.A.McCusker) Brigadier
D.D.M.S. 1 Cdn Corps

In the Field,
21 AUG 44

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/FAS/1697 (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.
C-94605	Pte		Edward Joseph	CUELLETTE,	1 Cdn Corps & Army Tps Sub Pk, RCOC

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 21 AUG 44 (date) 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.J. Legate (Must be named. RP 106.)	HQ RCEME 1 Cdn Corps Tps (Unit.)

MEMBERS.

Captain	J.W.R. Shaw	1 Cdn Corps & Army Tps Sub Pk, RCOC
Lieutenant (Rank.)	J.E. Bell (Named or detailed. RP 106.)	HQ 1 Cdn Corps Ord Fd Pk, (Unit.) RCOC

WAITING MEMBER.

Captain (Rank.)	P.A. Jourdain (Named or detailed, if any. RP 106.)	205 Cdn Armd Ord Sub Pk, (Unit.) RCOC

JUDGE-ADVOCATE.

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

On Active Service in the Fd

in Italy (Country.)

Date 21 AUG 44

E.A. McCusker.
(E.A.McCusker) (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Commanding D.D.M.S. 1 Cdn Corps
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 No. C-94605 - Pte. OUELLETTE, E.J.
1 Canadian Corps and Army Troops Sub Park, R.C.O.C. is
fit/~~unfit~~ TO UNDERGO TRIAL BY COURT-MARTIAL.

H Goldberg. Capt
.....
(Signature of the Medical Officer

Date. 24 Aug 44

1st Witness for Prosecution

B-58713 Cpl Grewar W. G., 1 Cdn Corps & Army Tps Det Pk P.O.S.
having been duly sworn, states; On 15 Aug 44, accused, who I recognize as Pk Dulette, reported on sick and dental parade. No sick report was made out as he had gone on sick parade on 14 Aug 44 and was to return for treatment on 15 Aug 44. ~~On~~ afternoon parade 15 Aug 44 was held at 1400 hrs. At approx 1530 hrs ~~[illegible]~~ ~~[illegible]~~ I was instructed to place accused under open arrest and found Pte Dulette in tent lines asleep in his tent. I woke him up and informed him that he was under open arrest at approx 1530 hrs. Pk Dulette reported ~~[illegible]~~ to O.R. shortly after that.

I took it for granted that accused was on sick parade on 15 Aug 44 as he had been instructed to return there the previous day.

When I waked accused in his bed I definitely ascertained that he had been drinking as I could smell liquor on his breath.

Accused seemed very sleepy and foggy, otherwise his attitude was quite proper.

X-Questioned:

I first saw accused on 15 Aug 44 at 1530 hrs. I did not see him in the morning, tho he must have been on pay-parade as his name appears on acquittance roll. Sick report of 14 Aug. stated accused was to be placed on light duty for 24 hrs but did not state he was to return following day. Accused had attended dental parade on 14 Aug and I was aware of the fact that he was told to return for treatment on 15 Aug.

I can't say if accused was on parade on 1400 hrs parade on 14 Aug. I believe accused was duty clerk on 15 Aug and in that capacity was not req'd to attend any parades.

Men of this unit were warned to strike camp for a move on 1400 hr. parade on 15 Aug 44. I can't say whether accused was on that parade or not, or whether he was in the orderly room or not. I have no reason to believe he wasn't. I placed accused under arrest on instructions of SQMS Hayward. I found accused asleep but did not enter tent, I spoke to him from outside the tent. I did not tell him the charge as I thought he knew it. I pulled back the pup tent and woke him up and he appeared foggy. I did not see accused take a drink that day. I did not say he was under the influence of liquor. Under the circumstances, finding accused as I did, I can not say that the accused was unfit for duty.

Re-exam: I am quite convinced that accused had been drinking. His duties would have been to drive the O.R. lorry from our former location to this location. Move was made in blackout, only pot. lights showing. I would not have allowed accused to drive this lorry that night in the condition he was in.

~~Re-exam by Defense~~:

Questioned by Court: I saw accused sleeping and shook his shoulder to wake him. I smelled his breath about a foot to a foot and a half from his mouth. ~~[illegible]~~ I did not notice any liquor or wine bottles in his tent.

2 witness for Prosecution:

H 36265 SQMS Hayward, G.D.; having been duly sworn states: On 15 Aug 44, just after 1400 hr parade I went to O.R. and accused, whom I recognize as Pfc Oulette, was there and he was under the influence of liquor. At approx 1500 hrs, after I had instructed men to strike camp, I found

me that still erected. It was Pte Oulette's and I found him in the tent asleep. I woke him up and told him to get on with the job. Start a half hour later I saw he had made no more so I sent Cpl Grewa to place accused under arrest.
Accused was insolent to me when I woke him as he was tight, and had a drunken attitude. I would say he was under the influence of liquor. As he was under the influence I didn't want to take a chance on his being in that condition for the more so I had to relieve him by another driver. I felt accused was unfit for duty as ~~as~~ the time I woke him and I wasn't going to take a chance on his being fit for duty that night.
X-Question: I first saw accused for the first time on 15 Aug after 1400 hrs. parade in O.R. He was duty clerk and was not required to be on parade. Men were warned to strike camp on 1400 hr parade 15 Aug. So if accused were not on parade he would not have been warned. In the O.R. I found accused under influence because I smelt his breath and his speech was rather thick. He was sitting down when I saw him. I did not see accused take a drink that day. His speech was not as clear as a man's speech who was sober. I did not remove him from his duty in O.R. He was capable of carrying on his duty so I did not remove him. I next saw accused at about 1500 hrs, asleep in his tent. I lifted the ~~flap~~ side of the tent and shook him. He was heavy eyed and a little incoherent in his speech. This condition might have been due to his just waking up, but not altogether as I spoke to him for ten minutes and his condition did not change. It may have been from five to ten minutes that I spoke to him. He lay there talking saying in effect "why should he have to take down his tent right now?"
Accused was assigned to drive O.R. lorry to new location. In my opinion accused wasn't capable for this duty

so I had to replace him. I surmised that accused was unfit for driving as I didn't want to take a chance on his condition. I did not know that accused had driven a vehicle all that night of 15 Aug. I told accused that ~~I would~~ he would either get on with his job and do his work as I would see that he would get 28 days.

Re-examine: My opinion of accused condition when I saw him in O.R. was that he may have been fit for his normal duty but not for the duty that I had assigned him.

Questions by Court: It was at 1500 hrs that I decided that accused was unfit for duty.

3 witness for Prosecution:

Major G. A. Brass, No 3 Coy Cdn Dental Corps.

Having been duly sworn, states: On 18 Aug 44 accused, who I recognize as Pte Oulette, came to me and asked me if I knew he was up for court martial. I told him no. He asked to see me alone and showed me the summary of evidence. He asked me to come before the court and state that I had given him a drug, he suggested cocaine, which would have induced the state of stupor in which he was found. I performed a dental operation on accused on 15 Aug. His condition did not warrant the use of a drug. I did not give him a drug. When he visited me on 15 Aug he was definitely under the influence of liquor.

X-Question: When accused came to me for treatment about 1500 hrs 15 Aug. there was definite smell of liquor his breath and he was definitely drowsy. You definitely expect an odour of a man's breath the day after he has been drinking but it is not as bad as that of more recent drinking. The operation was not of a painful nature but no drug was administered, it was not necessary. If operation had warranted it I would have administered it.

accused would know whether a drug had been administered or not as I merely used a pair of tweezers for about a thirty second operation. Accused did not use the words "perjure yourself" or "sign a ~~[illegible]~~ false statement." There was no doubt in my mind that he wanted me to give false evidence, asking me to state that I had administered a drug which I had not, and which he knew I had not administered. As accused left my vehicle he thanked me and I told him that he had nothing to thank me for - and he asked me to say nothing about it.

Re-Examine: The operation was done with patient sitting on the step of my vehicle. Only tweezers and mirror were used for the operation; my opinion is that no man would believe that a drug had been administered to him in this particular operation.

Defence submits that evidence for Prosecution does not establish prima facie case on the following grounds: No proof of accused drinking on the 15 Aug 44. No proof of accused being unfit for duty. No proof of accused having asked Major Bross to perjure himself or to sign a false statement.

Court disallows submission on grounds that prosecution has submitted sufficient evidence on both charges to proceed with trial.

1st Witness for Defence:

C-94605 Pte Ouelette, E.J. having been duly sworn states: On night of 14 Aug 44 I was not in a drinking party with some of the boys from this unit. Having had no sleep and as a result of a bad hangover I felt pretty dopey and sick. and my jaw was pretty sore. After 1400 hr

parade 15 Aug I reported to Maj. Beans who performed a dental operation by removing a piece of bone from my jaw. I immediately returned to the unit after the operation feeling sick and my jaw quite sore. I decided to go to my tent and lay down until the pain eased I fell asleep. Shortly afterwards SQMS Hayward came over and opened the flaps of my tent and told me to get on with the job. I got up then and still feeling sick decided to lay down for a few more minutes. Later on Cpl Grewan came over and lifted the flap of my tent, wake me up telling me to consider myself under open arrest, not stating the reason. I didn't get up immediately. So shortly afterward SQMS Hayward came back and told me I was under open arrest and to go on with the job or he would see that I got 28 days. He also told me that I was being replaced as driver of the office lorry. I took my tent down and put it and my kit in the office lorry. I then went over to Pte Hinton's lorry and asked him if I could be a co. ~~passenger~~ driver in his lorry for the move as I had been taken off the office lorry. He agreed. I then went and lay down under a tree where I remained until supper parade when I felt much better. During the move Pte Hinton told me that he was getting very tired and sleepy and asked me to relieve him of the driving for awhile. I did. I drove for approx two to three hours over a narrow winding and rough road.

I had had no sleep the night before and I was feeling pretty tired and feeling the effect of the hangover. When SQMS Hayward spoke to me at 1400 hrs on 15 Aug I felt dizzy. I did not have a drink that day. Dentist told me to report back on the 15 Aug. The operation was

very painful. In a hazy way I know what the dentist was doing, but I didn't know what instrument he was using - owing to the pain in my jaw. I am sure Maj. Brass did something before the extraction - he put something in my mouth, fooled around with my lip, and I think he gave me a drug. I had previously had an operation to remove a piece of tooth from the same cavity and at that time a drug had been given me. I assumed a drug had been given me again as it was a similar operation. I then went and lay down to ease the pain and fell asleep. Shortly after that the S.M. woke me. Cpl Grewar woke me up and told me to consider my self under arrest. I asked him why and he said "you ought to know." The only reason could have been because I was away from the O.R. at that time. I drove for Pte Hinton for two or three hours and drove over very bad roads.

X. examined: The dental operation performed on 15 Aug was painful. Drugs are given to ease the pain.

Question by Court: I did not sleep at all during the night of 14-15 Aug. I was up all night. I had been warned that I was to drive a veh on the move, but not on that night. I did not know that the unit was moving on the night of the 15 Aug.

"On the morning of 18 Aug I was brought in front of Major Munn, O.C. and told that I was being court martialled under a charge of being under the influence of liquor and incapable of carrying out my duty and remanded for 24 hrs for summary of evidence. Knowing that I had not been drinking on Aug 15, I thought that my condition on that day could be caused by a hangover

or the dental operation. On the afternoon of the 18 Aug I reported to Major Brass and told him that I was being court martialled and showed him a copy of summary of evidence which had been taken. I then asked him if he used a drug on the operation which could cause my condition that day and asked him if he would sign a statement to that effect. He answered that he had not used a drug and to sign such a statement would be perjury. When I asked the Major I sincerely thought that he had used some kind of a drug. He got quite sore and I said "just forget it" and left. I did not mention the word perjury or ask him to sign a false statement.
I thought something had been administered to me by the dentist on 15 Aug.

2nd Witness for Defence
B-9203 Pte Hunton C.L.H., On the afternoon of ~~14~~ 15 Aug Pte Ouellette approached me at about 1530 hrs and told me he had been taken off his lorry for the convoy that night and asked if he could accompany me. He said he had taken treatment at the dentist earlier that day and didn't feel well. He mentioned that he be been lying down and that he would be seeing one later on in the afternoon. About ½ hour before morning off Pte Ouellette joined me at my veh and said he felt much better. We moved off, very slowly up the division with numerous stops and I grew very tired. I asked accused to take over for an hour or so, which he did. I rested and slept and took over from him more than two hours later. This section of road was very tedious driving and lights were restricted. There was nothing unusual in accused condition at 1530 hrs on 15 Aug. He was not under the influence of liquor.

Pk Quillette would have to be in full possession of his faculties for driving over those roads that night.

X-Exam: No questions.

Questioned by Court: As nearly as I can remember accused told me he had been taken off his vehicle for driving, no convoy that night and asked to accompany me. This was at approx 1530 hrs on 15 Aug. He did not say why he had been taken off as driver.

Summing up. I want to clarify a point raised by Prosecution re application of a drug. Prosecution implied that a drug is given to ease pain, but a drug while easing a pain is no way dispenses with the pain. In his testimony accused said he did not know the time the convoy was to move off. In Pk Hinton's evidence shows accused said he was taken off as driver for convoy that night. Accused was only aware of this because he was so warned by SQMS Hayward at 1530 hrs. Defence contends Prosecution has failed to prove one of three essential points. No evidence has been brought forward to prove accused actually had any intoxicants that day. They fail to substantiate their charge that accused was under the influence of liquor. This was based entirely on evidence of two witnesses, one who saw him sitting down and the other while he was lying down just after he had been awakened from sleep.

The charge that he was unfit for duty is presumptious as he was not required to fulfill that duty until 7½ hours later. As a matter of fact accused did that very duty he was considered unfit for by the S.M.

In the second charge the prosecution must establish that accused actually and deliberately requested Maj Gross to perjure himself and sign a false statement. This they have failed to do. The point at issue is not

the word of an officer against that of a private?
Maj Brass' misinterpretation of the accused's
remarks. The actual issue is that the accused
must, and any element of doubt must be counted
as of benefit to the accused.
Is it reasonable to expect a PFC in his right senses
to approach an officer of the Rank and ask him to
commit perjury?

*

Prosecution.

The accused has been charged with being unfit for duty because of the fact, which has been proven without a doubt, that he was, or had been at sometime during the day of 15 Aug 44, drinking alcholic stimulants. I wish to point out to the court that the accused had not been charged with being drunk.

The defence has brought forward the fact that the accused did drive a vehicle on the night in question. That is all very interesting. But, does the fact that some irresponsible private allowed the accused to drive his vehicle, prove he was fit to drive? How many drivers under the influence of liquor, have driven vehicles and through sheer luck have gotten away with it. I leave it to the judgement of the Court to decide, even though the accused did drive a vehicle at sometime during the night of 15-16 Aug 44, whether or not he is guilty as charged.

The point remains that some few hours prior to the move, the accused had been drinking. I also wish to remind the court that all ranks of this unit had been warned at 0900 hours on the 15 Aug 44 that all vehicles would be marshalled and ready to move not later than 1700 hours on that day. The accused may have been able to drive a W.D. Vehicle sometime during the night, but when placed under arrest, it was the opinion of S.Q.M.S. Hayward a relisble and responsible W.C. of this unit and Cpl. Brewer also of this unit that he was not fit to carry out his duties and therefore had to be replaced.

Regarding the second charge, of approaching Major Brass and improperly requesting he give false testimony at his trial. It has been proven by the statement given by Major Brass that the accused did approach him with such a request. I wish to impress on the Court the seriousness of this charge. If such things are allowed to go on without being severely dealt with, discipline within the Canadian Army will undoubtedly suffer, and suffer severely. The mere suggestion of an other rank approaching an Officer, and a Senior Officer as in this case, shows clearly and distinctly that such an other rank has not an ounce of discipline in his character whatsoever. I ask the Court, in all fairness to the Officer concerned and for the retention of discipline within the unit in which the accused is now a member, that this charge be dealt with severely ~~and ruthlessly~~.

Plea for Mitigation of punishment

The defence contends that the accused is not a bad character, just a misled boy. During 26 months active service, he has only been charged with three offences, none of which were of a serious nature. The defence finds it difficult to understand why this man should have been remanded for a Court Martial on the basis of the first charge. Had the accused been administered a sound verbal lashing and a punishment consistent with the nature of the first charge, quite obviously the second offence would never have occurred. This man has been under arrest for over a week now, during which time he has had much opportunity to meditate and repent. He has no doubt learned his lesson. The award is unduly severe punishment, can serve no good purpose and only result in a disillusioned, embittered soldier, who will feel that the Army has let him down. At this stage of the war, and with an impending offensive in the offing, this man would certainly be of far greater service to his country, the Army and the Allied cause doing his job than languishing and marking time in a detention camp.

Exhibit "A"

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
C-94605	Private	Edward Joseph Ouellette	1 Cdn Corps & Army Troops Sub Park, RCOC.

1. The following is a fair and true summary of the entries in the ~~regimental and squadron, battery or company~~ conduct sheet[†] 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 :—

Field Service

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. 871, K.R., 1940.

[*] The number herein stated should correspond with the number of entries in the conduct sheets produced, being given to the most serious offence first and so on, and the entries recommended with 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) AWL	1 times	1 times.
For AA 19 Drunkeness	1 times	1 times.
For AA 40 Asleep whilst on duty	1 times	1 times.
For AA 11 In possession of liquor in his quarters	1 times	1 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,—~~

~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensed cases with and under section 71 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 N.A. day of N.A.

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, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 33 years; 6 months

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 11 April 42

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 years 4 months

8. The accused is entitled to deferred pay or gratuity in respect of 7 days service.

9. The accused is entitled to reckon 2 yrs. 4 months 7 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, ~~in military records~~ a military award (or is in possession of or entitled to (*state any military decoration or reward*)) Cdn Volunteer Service Medal

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 N.A., and in his regiment (*or corps or department*) the rank of N.A., dated N.A.

(*18250) W1 15832/141 325,000 6/41 A & E W.Ltd Gp.676

Exhibit B

M.F.M. 6
(A.F.B. 177)
40/P & S/136 (2837)

No. C-94605 Name OUELLETTE, E.J. Sqn., Battery, or Company No.1 Coy Corps R.C.O.C. Date of enlistment 11 Apr. 1942 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 1 Sept. 1942 No. and date of last drunk N.A. Period not reckoning towards freedom from extra fine N.A. Sheet No. 1 Signature O.C. Company, etc. Character O.Joly, Capt. 2 i/c

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
OLD SHEET DESTROYED ON COMPLETION OF 6 MONTHS SERVICE FROM 11 April 1942 J.L.							Leclure	O. Joly,	Capt. 2 i/c
Field	21 Oct 43			WOAS Absenting himself from duty in that he in the field absented himself from duty from 1445 hrs. 21 Oct. 43 till 1800 hrs. 21 Oct 43 (Time absent 3 hrs.15 min) Cont. to A.A. Sect. 40	C.S.M. Barbour		22 Oct 43		5 days for pay FR & I 149-2
Field	13 Dec 43			WOAS, Drunkeness, in that he, in the field, was drunk in the unit lines at about 1600 hrs. 13 Dec 43. Cont. to A.A. Sec 19	C.S.M. Evans, H.	Admonished 1st. Chg.	14 Dec 43	(R.G. Farrell) Major	

(P.T.O.)

Place	Date of offence	Rank	Cause of detention-ment	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order approving with trial	By whom awarded	Remarks
CHARGE I Field	18 Mar 44			WOAS Cond to the prejudice of good order and military discipline did absent himself from duty from 1300 hrs 18 Mar 44 till found asleep in his quarters at 1400 hrs. A.A. Sec 40	Sgt. Duffin CSM Evans	On charges 1 and 2 awarded 28 days detention and 28 days forfeiture of pay FR & I 149 1 (b)			
CHARGE 2	18 Mar 44			WOAS Neglecting to obey Part I Orders, in that he, in the field on 18 Mar 44 did have in his possession in his quarters, a bottle of wine, cont to Part I Order 76 d/17 Mar 44. AA Sec 11	Sgt. Duffin CSM. Evans				

19 Mar 44

A.G. DeWolfe

.....

(A.G. DeWolfe) Lieut.
Officer in custody of
Regimental Books.

CERTIFIED TRUE COPY

SUMMARY OF EVIDENCE

Summary of Evidence in the case of No. C-94605, Pte. OUELLETTE, E.J. of 1 Cdn. Corps & Army Troops Sub Park, RCOC., 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

No. B-58713, Cpl. Grewar, W.G. of 1 Cdn. Corps and Army Troops Sub Park, RCOC., a soldier of the Cdn. Army Overseas having been duly sworn, states:-

On 15 Aug 1944 Pte. Ouellette reported on sick and dental parade. The afternoon parade was held at 1400 hours and from approx that time until 1530 hrs I did not see Pte. Ouelette until I discovered him in his tent after being ordered by S.Q.M.S. Hayward to put him under open arrest. Pte. Ouellette reported to the Orderly Room shortly after.

Q-1 When you saw Pte. Ouelette in his tent, had he been drinking?

A-1 Yes, Sir.

Question by accused.

Q-1 When you found me in my tent was I awake or asleep?

A-1 You were asleep.

Q-2 Could you say I was drunk then?

A-2 I could not.

Q-3 How could you tell I had been drinking then?

A-3 I smelled liquor on your breath.

Q-4 Did you definitely see me take a drink?

A-4 No.

W. Grewar

.....

B-59713 (W.G. Grewar) Cpl.

SECOND WITNESS for the prosecution

No. H-36265, S.Q.M.S. Hayward, G.D. of 1 Cdn. Corps and Army Troops Sub Park, RCOC., a soldier of the Cdn. Army Overseas having been duly sworn states:

Immediately after the 1400 hours parade on 15 Aug 44 I went into the Orderly Room. Pte. Ouellette was there and he was under the influenceof liquor. I left him, and at approx 1500 hours after I had told all the men to take down their tents and pack their kit, I saw all the tents were down except Pte. Ouellette's. I then went over and found Pte. Ouellette asleep in his tent. I wake him up and told him to take down his tent and get his kit packed away. I left, and approx half an hour later found the job had not been done so I sent Cpl. Grewar over to place Pte. Ouellette under open arrest.

continued on page two

Q-1 Did Pte. Ouelette's manner appear to be insolent?

A-1 Yes, in a drunken attitude.

Q-2 Were all ranks of this unit warned to stand by for forth coming move?

A-2 Yes Sir, they were all warned on parade.

Q-3 When you saw the condition Pte. Ouelette was in, what was the result?

A-3 I saw he wasn't fit to drive the vehicle he was assigned to as the unit was moving at night without lights, so I had to find another driver to take his place.

Cross-examined by the accused.

Q-1 Did you or did you not see me take a drink that day?

A-1 No I did not.

Q-2 How can you say that at approx 1400 hours I was under the influence of liquor.

A-2 I could tell by your breath and actions.

Q-3 Was I staggering?

A-3 No you were sitting down.

Q-4 Did you or did you not make the statement that you would see that I got 28 days for this?

A-4 No.

Q-5 Would you repeat the statement you made to me regarding the 28 days.

A-5 Yes. I told you that you would either do the job or I would see you would get twenty-eight days.

Q-6 On what parade were the men warned to stand by.

A-6 They were warned by Capt. Shaw on the morning of the 14th. On the noon parade of the 14th. they were told the move had been postponed and they were to carry on with their normal duties. On the following day at 0900 hours they were warned to have vehicles marshalled at 1700 hours.

Q-7 At what time did you figure I wasn't capable of carrying on as driver of the lorry?

A-7 At approx 1500 hours.

Q-8 Was the move known to be a night move which may commence at any time through the night?

A-8 Yes.

G.D. Hayward

.....

M-36265(G.D. Hayward) S/SMS.

continued on page three

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 make a statement and reserves his defence.

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.

A G DeWolfe
.....
(A.G. DeWolfe) Lieut.
Officer detailed to take the Summary of Evidence.

In the Field in Italy

...11 Aug 44.....
(Date).

ADDITIONAL SUMMARY OF EVIDENCE

Additional summary of Evidence in the case of No. C-94605 Pte. OUELLETTE, E.J. of 1 Cdn. Corps and Army Troops Sub Park, RCOC., a soldier of the Cdn. Army Overseas.

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

Major G.A. Brass of No. 3 Dental Coy., Cdn. Dental Corps, an officer of the Canadian Army Overseas having been duly sworn, states:
On 18 Aug 44 Pte. Ouellette, E.J. of 1 Cdn. Corps and Army Troops Sub Park, RCOC., approached me and suggested that I perjure myself at his Court Martial by saying on the 15 Aug 44 during a dental operation I gave him a drug, cocaine, that could have induced a state of stupor in which he was found and charged with drunkeness.

Q-1 When the accused visited you on the 15th. had he been drinking?

A-1 Yes.

Q-2 Was the condition of his mouth serious, or trivial.

A-2 I would say it was minor.

Q-3 What did you say to the accused when he suggested you perjure yourself?

A-3 In as much as I didn't use any drug, I said the proposition was out of the question.

The accused declines to cross-examine the witness.

G.A. Brass Maj.
(G.A. Brass) Major

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 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.

A.G. DeWolfe
(A.G. DeWolfe) Lieut.
Officer detailed to take the Summary of Evidence.

In the Field in Italy
(Date) 19 Aug 44

8 P. 24.

Ste. Ouellette, N.

SCHEDULE.

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

Accused: D-46226 Pte Henri OUELLETTE (Royal 22nd Regiment) att 1 Cdn Discipline Centre

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. 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 ..... 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 50 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 90 days.

To pay, or forfeit, under stoppages of pay to be awarded of £0.8.0 in respect to cost of apprehension.

(Sgd) ..... Judge-Advocate, if any. 1st July 45 Date awarded. (Sgd) J.W. Jeffrey Major President. (RP 45, 50.)

(See back of Convening Order as to 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.)

(Sgd) J.D. Lewis Brig.

Date 5 July 45 Commanding 3 CBRGD Confirming Officer.

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

Accused.	Date.	Signature of Offr.
D46226 PTE HENRI OUELLETTE	10 JULY 45	W.H. Richmond Lt-Col Comd., 1 Cdn Discipline Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

GP #1764/3 8/11 Jul 45

RECORDED AT CMHQ IN AB 169 [illegible] 5 P 27

CP A66 (to item 10 of AF A81) 40-P & B-1698 4/388

FIELD GENERAL COURT-MARTIAL

REVIEWED by Order of Brig J S H Lind DSO Comd 3 CBRD dated 2 JUL 45

REVIEWED 18 JUL 1945 HQ BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED J. Ridgewell, Capt 19 July 45 REVIEWING OFFICER, HQ BRANCH C.M.H.Q.

D Adm Sec, 1 Can Army Gp 21 Army Gp

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) 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.
D-46226	Pte	Henri	OUELLETTE	Royal 22nd Regt att 1 Cdn Discipline Centre

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 1st 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 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 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 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 ~~Lieut~~ Capt MONFETTE as interpreter? Ans No - Sir.

~~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, 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.E. Jeffrey - Seaforth Highrs	Cdn C.M. Centre
Member	Capt	J.W. Vanty - Leinster Scots	Cdn C.M. Centre
Member	Capt	K.G.L. Miles R.C.A.	Cdn C.M. Centre
Judge-Advocate	—	—	—
Prosecutor	Capt	A.S. Auer R.C.A.	Cdn C.M. Centre
Defending Offr	Capt	C.T. Gale	Cdn C.M. Centre

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 DI p 3.)

A8. The accused D-46226 Pte Henri OUELLETTE before arraignment makes (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 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 D.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

11-63 GPBG Vol 1 p 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(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 - 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 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 - 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. Yes, in mitigation of punishment by Defending Officer.(2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to state 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 KO 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.

MFB 246

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 55)
(CMH1 CL 173)

I certify that I have this day examined D46226 (No.)
PTE (Rank) OUELLETTE H. (Name) and in my opinion he is
fit ~~unfit~~ to undergo trial by Court-Martial.

Station FIELD (Medical Officer) (Sgd)

Date 4-7-45 Unit ICDN. DIS. CENTRE

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-46226	Pte		Henri	OUELLETTE	Royal 22nd Regt att 1 Cdn Discipline Centre

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) 2 JUL 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	A E LEFROY Seaforth Highrs	Cdn C M Centre

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	J W VARTY Lorne Scots	Cdn C M Centre
Capt	R G L MILES RCA	Cdn C M Centre

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 2 Jul 45

J. S. Lind (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Commanding (J S H LIND) 3 Cdn Base Rft Gp Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

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

C H A R G E S H E E T

The accused, D-46226 Pte H enri OUELLETTE, Royal 22nd Regiment, attached to 1 Cdn Discipline Centre, a soldie 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 2300 hrs 16 Apr 45 until apprehended in BRIGHTON, England at 1915 hrs 16 May 45.
(Cost of apprehension: £0/8/0)

Total absence: 29 days 20 hrs 15 minutes)

In the Field
29 Jun 45

W Richmond
(V S / Richmond) Lt col
Commanding
1 Cdn Discipline Centre

To be tried by Field General Court-Martial

In the Field
2 Jul 45

J S H Lind
(J S H LIND) Brigadier
Commanding
3 Cdn Base Rft Gp

Address in Mitigation. - Pte Ouellette.

Sir:

The accused was born on 28. Nov. 1920. He is not married and is partly responsible for the support of his family as his father is unable to work. He enlisted 27 June 1941 at Sherbrooke Que and came to U.K. in Nov 41 with F.M.R. He landed in Sicily as a reinforcement for R.22.R. in July 43 but was unable to join them until Oct 44 due to various periods of hospitalization. He came to N.W.E. with his unit, was hospitalized again, and on his discharge received his first leave since ~~going to Sicily~~ leaving FMR. prior to going to Sicily.

Ouellette offers no excuse for his behaviour and is willing to stand up to his punishment as a soldier should. I ask the Court to consider his record and his length of service when they are awarding punishment.

Geo Gale Capt.

Field
~~[illegible]~~, Belgium
4 July 45.

Evidence in the case of

No 46266 Pte Ouellette Ht. R 22 Regt attached to 1 Cdn Dis Centre.

E. 49489 Sgmn Monfette G duly sworn as interpreter

the accused pleads guilty to the first charge.

the prosecution submits MFM 6 and AF B296 statement of particulars & character

The defending officer makes a plea in mitigation of punishment

Exhibit "A"

Summary of Evidence in the case of D 46226 Pte OUELLETTE H Royal 22nd Regt, attached to 1 Can Discipline Centre, a soldier of the Canadian Army Overseas.

Charge - Absence without leave

By direction of the CO the evidence is taken on oath

The following documents are read over to the accused, marked as exhibits and are attached to the proceedings.

Exhibit "B" - Certificate of apprehension dated 18 May 45

Exhibit "C" - CMHQ 1000:55 Expense Voucher

FIRST WITNESS Major Noel C Dawson att 1 Can Discipline Centre sworn states:

On the 27 day of Jun 45, I interviewed the accused D46226 Pte OUELLETTE H, attached to 1 Can Discipline Centre, whom I now recognize. After making my identity known I cautioned him as follows:-"You are not obliged to say anything unless you wish to do so but anything you do say will be taken down in writing and may be used in evidence." The accused understood the caution and signed his name to the statement which was read over to him. It is attached to these proceedings as Exhibit "A".

The accused declines to cross-examine this witness

(Noel C Dawson) Major

Desirez vous faire une declaration ou rendre temoignage sous serment? Vous n'etes pas obligé de dire quoi que ce soit ni de rendre temoignage a moins que vous ne le desiriez mais tout ce que vous direz ou toute deposition que vous ferez sera pris ecrit et pourra servir de preuve.

Je n'ai rien a dire

The accused does not call any witness

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 Rr 4 (C)(D)(E)(F) and (G) have been complied with.

(Maurice Rousseau) Capt

Officer detailed to take Summary of Evidence

Dated in the Field
29 Jun 45

Exhibit B

CERTIFICATE IN ACCORDANCE WITH P.C. 2787 of 10 Apr 44

I Certify that No. D-46826 Rank. Pte. Name. Ouellette H. M. Rousseau Capt.

Unit Royal 22 Regt. (1st Can. Army) was Arrested at Brighton (place)

at 1415 (Hour) on 16-May-45. (date) and that at the time of his arrest he was wearing (Military Uniform) ~~(Civilian Clothing)~~. Signature of Provost-Marshal, Assistant Provost-Marshal, 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).

London
16-May-45.

.....Capt.
(R.W. Kyle)
D.A.P.M. C.M.H.Q.

Expense Voucher Re—: Ref: KR & O (Can) 539 Exhibit "C" M Rousseau Capt.

Reg No. D 46226 Rank Pte Name Ouellette, H Unit 4C 1TR

The following expenses were incurred in apprehending and returning the ~~MN~~ Soldier to ~~his Unit From~~ London from Brighton

Date	Particulars (½ portion)	Amount		
1 May 45	Escorts return fare from LONDON To Brighton		4	0
	Prisoners single fare to LONDON From Brighton		4	0
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		8	0

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

[signature] Capt

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

CMHQ 1000-55
40/P&S/483(5639

Exhibit "A"
M. Rousseau Capt

CANADIAN PROVOST CORPS

COMPANY: FORMATION:

LOCATION: 16th Brit Army DATE: 27 May 45 FILE NO:

STATEMENT

Reg No: D46226 Rank: Pte Name: OUELLETTE H

UNIT: R 22 R.

STATES: "I have been warned 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 fully understand the meaning of this caution, and to show that I do so I sign my name herewith."

Signature: H Ouellette

I joined the army Jun 41 and came to England Oct 41 and to Sicily in Jul 43 and was there until the Div came to France. I was in hosp in BRUSSELS and from there went to LEOPOLD BKS they gave me BLA Leave which expired at 2300 hrs 16 apr 45 I overstayed it until 1915 hrs 16 May 45 when I was arrested at BRIGHTON (total absence 30 days 20 hrs and 15 min).

I have had this read to me and it is true I have had the opportunity to add change or delete any part of it

H Ouellette

Taken down by me
in presence of the
accused this 27 day of June 45

Paul E Lawson
Major

LIST OF WITNESSES

PROSECUTION Major Noel C Dawson Asst 1 Can Discipline Centre

DEFENCE

N/A

LIST OF EXHIBITS

WRITTEN STATEMENT of accused taken by Major Noel C Dawson Asst 1 Can Discipline Centre "A"

Certificate of apprehension dated 16 May 45 "B"

CMHQ 1000:55 Expense Voucher "C"

I, the undersigned, hereby acknowledge receipt of one copy of Charge Sheet and one copy of Summary of Evidence free of charge on 29 Jun 1945.

H Ouellette

D40220 Pte Ouellette H

I, D40220 Pte Ouellette H desire to have an officer assigned to represent me at my trial by Field General Court-Martial.

I desire the services of any officer detailed ~~if he is available.~~

DATE: 29 Jun 45

H Ouellette
(Signature of Accused)

Exhibit "B" 16

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 40226	Pte	OUELLETTE HJ	Royal 22 Regt

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 Nil entries on MFM 6 times.

For times.

For times.

For times.

Date of first entry in Field Conduct Sheet NIL

Date of last entry in Field Conduct Sheet NIL

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

*Strike out if not applicable.

*3. The accused at the present time is under sentence for NIL beginning on the N/A day of N/A

4. The accused has been awaiting trial on the present charges for NO days in civil custody ; and for 50 days in military custody, i.e., NO days in open arrest, 50 days in close arrest : of which NO days were spent in hospital.

5. The present age of the accused is 24 years 7 months old

6. The date of his attestation ~~calling up for military service~~ is 27 June 41

7. The service which the accused is allowed to reckon is

8. The accused is in possession of** C.V.S.M. with 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.*

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT, of

~~Summary Award under Sec 47 AI and of cases in which trial has been dispensed with of aproved~~

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 enuries on MFM 6			

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 4th day of July 1945

(M A Cooke) Capt & Adj.

Officer ic Regtl Books 1 Gun Discipline Centre

No. D40220 Name OUELLETTE HJ Sqn, Battery, or Company | Corps | Date of enlistment | CC 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

3/17 MFM 6 (AFB 122) 40/PAM/180 (54183)

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
				NIL entries					
				Certified true copy of original MFM 6 in my custody				(M A Cooke) Capt & Adjt Officer ic Regtl Books & Docs. 1 Cdn Disciplinary Centre	

(PTO)

GGG-132
PTE OUELLETTE H

SCHEDULE.

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

Accused: D 46226 Pte Henri Ouellette

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. 18 (a)	GUILTY	GUILTY	
2nd A.A. 15 (c)	GUILTY	GUILTY	
3rd A.A. 24 (a)	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 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 12 days, of which 8 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 12 months and to be fined under stoppage of pay amounting to $100.00 made up as follows: [illegible]

(Sgd) [illegible] Capt 1/11/43 (Sgd) [illegible] Lt-Col

Judge-Advocate, if any. Date awarded. President. (RP 45, 60.)

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

RCAMC

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.)

(Sgd) E.A. McCusker.

Date 17 Dec 43 Commanding E.A. McCusker, Brig. D.D.M.S. 1 Can Corps

Confirming Officer.

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

Accused. D46226 PTE OUELLETTE H. Date. DEC 21/43 Signature of Offr. Maj and Hosp Comdt RCAMC OC #1 Can FDS

R 22 R.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

ENTERED IN RECORDS OF C.M. GGG/132

FIELD GENERAL COURT-MARTIAL

CPA86 (In lieu of AFA3) 40/P.N.S./1608 (2864)

Convened by Order of Brig. E.A. McCusker, RRC Comd 1 Can Corps dated 16 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) 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.
D 46226	Pte	Henri	Ouellette	R 22 R

PROCEEDINGS REVIEWED

[illegible] Lt-Col

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Sicily on (date(s)) 17 Dec 43 AD

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 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 1040 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.(1)~~

(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 R.M. Brousseau as interpreter? Ans No

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	Hugues Sperin	16 Can FDS RCAMC
Member	Capt.	M.F. Hilary	1 Can Corps HQ RCASC
Member	Lieut.	Geoffrey Morgan Bagge	H.Q. 1 Can Corps
Judge-Advocate	Capt	Aimé de Kerpoisson	RCA HQ 1 Can Corps
Prosecutor	Lieut.	J.E. Campbell	N.S.R. at 1 CMRS
Defending Offr	Lieut.	C. Dufresne	R 22 R at 1 CMRS

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(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 "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*(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~~ *AB* 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 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 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)~~ *AB*, 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 th~~ese~~ document~~s~~ refers *AB* (i) ~~they~~ purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) ~~they~~ purports *AB* to the accused, because 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 .... respectively~~.(3) *AB*
(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)~~ *AB*, and in mitigation of punishment ?(1) Ans *Yes, my defending [illegible] will speak on my behalf*(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 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, D-46226 Private Henri OUELLETTE of R. 22e R., attached to Canadian Medical Rest Station, a soldier of the Canadian Army Overseas, is charged with when on active service:-

STEALING PUBLIC PROPERTY

First Charge
Section 18(4)
Army Act

in that he

in the Field, in Sicily, during the night of 25/26 Nov 43, did steal 28 jersey pullovers, 3 shirts Angola, 10 blankets G.S., public property, from the Quartermaster Stores of Canadian Medical Rest Station, the said articles being of the value of £ 17-11-6.

ABSENTING HIMSELF WITHOUT LEAVE

Second Charge
Section 15(1)
Army Act

in that he,

in the Field, in Sicily, on 26 Nov 43, when detailed for guard duty, absented himself without leave from 0900 hours, 26 Nov 43, until 0830 hours, 5 Dec 43. (Absent 9 days, 11 hours, 30 minutes.)

LOSING BY NEGLECT HIS CLOTHING

Third Charge
Section 24(2)
Army Act

in that he,

in the Field, in Sicily, at approximately 0900 hours, 5 Dec 43, was deficient,

Article	Vocabulary Value
2 jersey pullovers	£ 0- 13 - 6
1 vest woolen	£ 0- 5 - 1
Total Value	£ 0- 18 - 7

75% of the Vocabulary price of which is £ 0 - 13 - 11.

(F.C. Pace) Major
Commanding,
Canadian Medical Rest Station.

In the Field
13 Dec 43.

Approved on behalf of JAG Cdn Army Overseas pursuant to Overseas RO 2223 and KR(Can) 540.

In the Field
16 Dec 43.

CAPT.
A.D.J.A. CDN. CORPS.

To be tried by Field General Court Martial.

(E.A. McCusker) Brigadier
D.D.M.S. 1 Cdn Corps.

In the Field
16 Dec 43.

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

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-46226	Private		Henri	OUELLETTE	R 22e R attached Cdn Medical Rest Station

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 Dec 43 endorsed by me, ~~(or by an offr of my staff for me),~~ " To be tried by Field General Court-Martial ". Same

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.)~~ Same
(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. Same

~~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.) Magnus SPENCE (Must be named. RP 106.) 16 Cdn FDS RCAMC (Unit.)

MEMBERS.

Captain M F HILLARY 1 Cdn Corps Tps Wkshop RCOC

Lieutenant (Rank.) Geoffrey MORGAN-DAVIES (Named or detailed. RP 106.) HQ 1 Cdn Corps (Unit.)

WAITING MEMBER.

Lieutenant (Rank.) To be detailed by OC 1 Cdn Med Rest Station (Named or detailed, if any. RP 106.) (Unit.)

JUDGE-ADVOCATE.

Captain (Rank.) A Des Rosiers (Must be named, if any. RP 106.) ADJA 1 Cdn Corps (Unit.)

On Active Service in the Fd

in Sicily (Country.)

E. A. McCusker
(E.A. McCusker) (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 16 Dec 43

Commanding DDMS 1 Cdn Corps 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 (NO) R-46226

(Rank) Pte (Name) Aulette H.J. (Unit) R 22nd Regt

and in my opinion he is fit/~~unfit~~ to undergo trial by court-martial.

In the Field

Date 17/12/43

P M Spence Capt

(Signature of M.O.)

Reave

I

D. 46226 Pte Henri Ouellette. R 22 R. att. # 1 C.M.R.S.

The Prosecutor informs the Court that the accused's unit has never been furnished with Particulars of Service and Conduct Sheets of the accused, and therefore cannot produce M.F.M. 6 or completed M.F.R. 355.

Address in mitigation of punishment by defending Officer.

The acc. has pleaded guilty to all charges and wishes to get it over.

He appears to have no previous convictions.

Asks clemency of Court. He has willingly admitted his offences thereby facilitating the administration of justice.

H.B.

EXHIBIT "A"

64 Section,
Special Investigation Branch,
Corps of Military Police.

Statement of:- No D/46226 Pte. H. OUALLETTE,
22nd Rail Regiment,
Canadian Forces.

Who saith:- I have been cautioned that I am not obliged to say anything unless I wish to do so, but that anything I do say will be taken down in writing. and may be given in evidence

H Ouallette

I have been at this Rest Centre for about a month and came from the 5th Canadian General Hospital. I know a Pte SKILTON who was a good friend of mine. About 10 days ago Skilton approached me and asked me if I would like to go with him and do a break. I agreed. We both went together to the Q.M. stores at the Rest Centre. Skilton then went in the store through the door which was not locked while I stayed outside keeping watch. About 10 minutes later Skilton came out of the stores carrying a big bundle. We then went up the road and about half a mile from the Centre he gave me about 10 blankets and about 10 jerseys. ~~[illegible]~~. From there I walked to Catania. A short distance afterwards we left each other and I gave him back all the blankets and jerseys. I then went down to town and stayed at a whorehouse. I would

H Ouallette

be unable to find this house again. I later returned to my Unit and gave myself up. I have had this statement read over to me, it is true, and is made quite voluntarily, and no persuasion, inducement or threat has been used or held over me.

H Ouellette

Statement taken and signature witnessed by me in the presence of Sgt. Byers, S.I.B. on 6th December, 1943.

J Howarth
DSM

Exhibit "B"

No. 64 Section,
Special Investigation Branch,
Corps of Military Police,
C.M.F.

STATEMENT OF :- No. 2160875 Sergeant Eyres. J.
No. 64 Section,
Special Investigation Branch,

WHO SAITH :-

About 16.00 hours on 6th. December 1943, I was present when No. B/46226 Pte. Ouallette was interviewed at No.1. Canadian Medical Rest Station, I heard R.S.M. Howorth caution him, and I saw him sign a statement which he had made.

I later interviewed No. F/49827 Pte. Skilton and I cautioned him. He said, ' I have nothing to say'.

About 10.00 hours, 7th. December 1943, I served a copy of Ouallettes' statement on Pte. Skilton. He said, ' I have nothing further to say'.

J. Eyres.
Sergeant.
Special Investigation Branch.

In the Field.
7th. December 1943.

Exhibit "C" No.

Documentary

26 Nov. '43

At 0600 hours 26 Nov '43. 346936 Pte Ouellette H. was absent when I called him to relieve the sentry then on duty. To the best of my knowledge he was absent until hours

1157043 Cpl Smith J. H.

Guard Commander.

1 Summary of evidence in the case of D4622 #6
Pte Henri Ouellette, (R22R) on the strength of
#1 Cdn Med Rest Station, a soldier of the Cdn Army
Overseas.

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

Do you object to Capt. A. Des Rosiers RCA. HQ1 Cdn Corps as interpreter Overseas? No.
The interpreter is sworn.

First Witness for the prosecution

56404 R.S.M. Jack Howarth 64 S.I.B.

a soldier of the British Army
Overseas having been duly sworn, states as follows:

On the 6th Dec 1943 as a result of
information obtained I interviewed the
accused. I told him who I was and
the nature of my inquiry and cautioned
him as follows you are not obliged to
say anything unless you wish to do so,
but anything you do say will be taken
down in writing and may be given in
evidence

The accused read over the caution
which he signed. I then wrote the
statement down at his dictation
which he read over and signed
in my presence together with that of
Sgt. Jim Eyres.

Statement produced, read and
marked as exhibit "A" and initialed.

I am sure the accused understood
the statement when he read and signed
it. Cross examined by the accused

Question 1. Is it not a fact that when
you asked me wether or not I
understood English I answered,
"no. not much".

Ans 1 That is correct. I told him that
anything he did not understand,
to ask me again.

J Howarth
66 SM 13/12/43.

Ct Section
Special Investigation Branch

Exhibit A.
[signature]

2
Second Witness for the prosecution

5180875 Sgt. Jim Expes 64 Sec. S.I.B
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 exhibit "B".

Having regard to the exigencies of the service, attendance of this witness cannot be readily procured, in my opinion.

sgt J Campbell Lieut
Officer detailed to take the Summary of Evidence

The accused does not demand the attendance of this witness for cross-examination

Third Witness for the prosecution

F 41644 C.Q.M.S. Stewart Condon of the #1st Cdn. Med. Rest Station a soldier of the Cdn. Army Overseas having being duly sworn states as follows:

On the morning of 26 Nov 1943 I went to the stores of #1 Cdn Med Rest Stat. and in company with my storeman discovered that some articles were missing, to wit;

28 jerry pullovers
3 shirt angola (collars attached)
10 blankets, G.S.

These articles were part of the stock on hand, their value at that time was ~~£17 [illegible] 14d~~ £17-11s-6d

On investigating with my storeman we discovered that the screen of a window in the back room of the stores was torn from the top. Going outside, this window we found tracks of foot steps right along side of the window. On the previous day I had occasion to notice that this screen was in good order.

There are two doors to the stores. When I left the stores at approx. 2045 hrs on 25 Nov 1943 one door was bolted from the inside and the other I locked from the outside with a pad-lock.

Ab

3.

I gave the key at 2230 hrs to one of the storemen who slept there that night

On 5 Dec 1943 at approx 0900 hrs I inspected the kit of the accused and found him deficient:

	Value
2 jersey pullovers	13/6
1 vest wollen	5/1
Total value	18/7.

The accused declines to cross-examine this witness

S H Condon
C.L.M.S. for C.M.R.S.

Fourth Witness for the prosecution

G 7016 Sgt. Harry French (R.C.A.) of the C.M.R.S. a soldier of the Cdn Army Overseas having being duly sworn states as follows:

At approx 1030 hrs on 25 Nov 43 I personally detailed the accused for guard duty from 1600 hrs 25 Nov 43 to 1600 hrs 26 Nov 43. At approx 0900 hrs on 26 Nov 43. acting on information recieved I searched the comp area for the accused but he was no where to be found. I did not see him until 5 Dec 43 at approx 0830 hrs.

The accused declines to cross-examine this witness.

H J French (S.F.) 1 CMRS

Fifth Witness for the Prosecution

K 57093 Cpl. T.H. Smith of the #1 Cdn Med Best Stat

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 of evidence and marked exhibit "C"

Having regard to the exigencies of the service, attendance of this witness cannot in my opinion be readily procured

J Campbell Lieut
Officer detailed to take the Summary of Evidence.

The accused does not the attendance of this witness for cross-examination.

Sixth Witness for the ~~witness~~ Prosecution

M7358 C.S.M. David W. Fox of the #1 Can. Med. Best. Stat a soldier of the Can. Army Overseas having being duly sworn states as follows:

On 5 Dec 43 at approx 0830 hrs acting on information received I went to the kitchen where I found the accused. He had been missing for some 10 days previous I ~~had~~ immediately had him put under close arrest and ordered CQ MS Condon to inspect his kit.

The accused declines to cross examine the witness.

David W. Fox.

The accused was cautioned in French as follows: "Do you wish to make any statements or to give evidence on Oath? you are not obliged to say anything or evidence, unless you wish to do so, but whatever you say or ~~any~~ give evidence you give, will be taken down in writing and will be given in evidence.

The accused declines to make a statement and reserves his defence

B. I certify that the foregoing Summary of Evidence consisting of (4) four pages was taken down by me in the presence of ~~the accused~~ and hearing of the accused and that the Rules and Procedure 4(c),(d),(e),(f) and (g) have been complied with. J. Campbell Lieut

Officer to take the Summary of Evidence

Exhibit "B"

M.F.D. 358
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D46226	Pte	DUBLETTE, Henri	R22R.

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, of summary awards under Section 47 of the Air Force Act / Army Act and of cases in which trial has been dispensed with.

Record of service not available

	Within last 12 months	Since enlistment
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.

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

2. The accused has not been previously convicted N/K

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.

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 N/C days in civil custody, and 12 [illegible] days in military custody, making a total of 12 [illegible] days in custody, of which N/K days were spent in hospital.

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

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

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

8. The accused is entitled to reckon ~~[illegible]~~ 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.

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

Certified True Copy

CFA 96

Spare copy GGG-132

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig. E.A. McCusker Comd. DDMS 1 Cdn Corps dated 16 Dec 43

ACCUSED

D-46226 Pte Henri OUELLETTE R. 22 R
att. C.M.R.S.

PROCEEDINGS OF TRIAL

Held in the Fd in ~~Italy~~ Sicily "H16" on 17 Dec 43

RECORD FORM A - OPENING PROCEEDINGS AND ARRAIGNMENT

A.1. No change.

A.2. No change except (s) in word Sheet(s), line 1 is deleted and (are) in line 2 is deleted. "AD"

A.3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1040 hours trial commences.

A.4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) Remainder of para. deleted. "AD"

A.5. President to accused: Do you object to Capt. R.M. Brousseau as interpreter, Ans NO

The Interpreter is sworn. ~~Do you object to ---as shorthand writer, Ans--- The shorthand writer is sworn.~~

A.6. No change.
Ans. No Sir.

A.7. The President, Members, ---etc., (no change)

President	Major	Magnus Spence	16 Cdn FDS RCAMC
Member	Capt	M.F. Hillary	1 Cdn Corps Tps W/S RCOC
Member	Lieut.	Geoffrey Morgan Davies	HQ 1 Cdn Corps
Judge-Advocate	Capt.	A. Des Rosiers	RCA HQ 1 Cdn Corps
Prosecutor	Lieut	J.E. Campbell	WNSR att: 1 CMRS
Defending Offr	Lieut	C. Dufresne	R 22e R att: 1 CMRS

Questions by President: Is the Prosecutor a lawyer, Ans NO
Is the Defending Offr a lawyer, Ans NO

A.8. The accused--------before arraignment make(s) (no) ~~(a)~~ plea. "AD"

A.9. No change except words (are), (separately) and (do) in line 1 are deleted. "AD"

A.10. 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"

CERTIFIED TRUE COPY

R.E. Ouellette
(R.E. Ouellette) Capt

CANADIAN SECTION
DISCIPLINE & PAY SECTION
4 JAN 1944
A.I.C. CHELSEA

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT

No change.

RECORD FORM B - PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES

B.1. No change.

B.2. No change.
President to Accused: Do you wish to make a statement, Ans NO

B.3. Completely deleted "AD"

B.4. 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)

B.5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President

B.6. No change.

RECORD FORM C - PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY

Completely deleted. "AD"

XI.

Space for further Review (continued from page 2).

Date	Directions	Signature and Appointment of Authority giving the directions	If sentence suspended, date of release, No. of marks earned to count towards remission, and signature of O.C. Prison or Detention Barracks

XII.—Remarks and recommendations of C.O. on Second Trial.

Date		Signature

XIII.—Remarks and recommendations of Confirming Officer on Second Trial.

Date		Signature

Army Form A3104.

REVIEW OF SENTENCES AWARDED BY COURT MARTIAL.

I.—Case of No. Indecent Ass, CUMBERMERE, H. Unit RASeR (Att CMRE)

Sentenced to 12 months detention on 17 Dec 43,

Age on, and date of enlistment ..... Term of service .....

FIRST TRIAL.

For details of offences, see paragraph VII. For C.O.'s remarks, see paragraph IX.

II.—To .....

Superior Military Authority.

I have directed that the above-named be not committed to undergo his sentence, which I recommend should be (suspended) (put into execution) (1) for reasons given in paragraph X.

Place .....

Date ..... Confirming Authority.

III.—I direct that the sentence (which I hereby commute to .....) (of which I remit .....) (1) (2) (be suspended) (be put into execution) (1) and be reviewed on .....(3).

Place .....

Date ..... Superior Military Authority (4).

(For action on review, see paragraph VI.)

SECOND TRIAL.

For details of offence, see paragraph VIII. For C.O.'s remarks, see paragraph XII.

IV.—(5) To .....

Superior Military Authority.

This man was again convicted on ..... and sentenced to ..... and I have directed that he shall not be committed to undergo his sentence, which I recommend should be (suspended) (put into execution) (1) and run (concurrently) (consecutively) (1) with the previous (6) sentence for the reasons given in paragraph XIII.

Place .....

Date ..... Confirming Authority.

V.—(5) I direct that the sentence (which I hereby commute to .....) (of which I remit .....) (1) (2) (be suspended) (be put into execution) and that it run (concurrently) (consecutively) (1) with the previous (6) sentence of ..... and be reviewed on .....(3).

Place .....

Date ..... Superior Military Authority (4).

(1) Erase words not required, and initial erasures.

(2) A sentence of penal servitude or imprisonment, combined with Discharge with Ignominy, cannot be suspended unless the Discharge with Ignominy is remitted.

(3) A suspended sentence must be reviewed *at least* once every three months, and a sentence put into execution should be reviewed in not more than six months.

(4) An order directing a sentence to be put into execution must be signed by the Superior Military Authority personally.

(5) This paragraph to be left unused until required. If the man is convicted a third time, a fresh form, using only paragraphs IV. and V., will be made out and attached to this form, and all further reviews will be on the attached form.

(6) A previous sentence of imprisonment or detention in a state of suspension is avoided by the award of a subsequent sentence of penal servitude.

(15712) W4,24508/373 7,000 8/40 A.A. K.W.Ltd. Gp.498
(18981) W1,39843/3217 15,000 12/40 " Forms A.3104/11

VI.—Action on Review.

(Whether the sentence or sentences are suspended or in execution.)

Any Reviewing Authority *under Section 57 of the Army Act* may under that Section mitigate, remit or commute a sentence which is in execution, and if the sentence as commuted or mitigated is penal servitude, imprisonment or detention, it will remain subject to the powers granted by Section 57A. of the Army Act. A partial remission of a sentence in suspension is not legal.

All recommendations, etc., considered upon review, should be pasted here.

Date	Directions	Signature and Appointment of Authority giving the directions	If sentence suspended, actual date of release and marks earned to count towards remission and signature of O.C. Prison or Detention Barracks
23 Jun 44	No remission	E. Lee Burns Lt Gen Comd 1 Cdn Corps	

(Continued on page 4.)

If further space required, an additional slip should be pasted here.

Charge or Charges giving particulars	Date of Offence	Date of Trial
VII.—First Trial.		
1ST CHARGE - AA 18(4) STEALING PUBLIC PROPERTY FROM THE QUARTERMASTER STORES, CMRS.	25/26 Nov 43	17 Dec 43
2ND CHARGE - AA 15(1) AWL FROM 0900 HRS 26 NOV 43 UNTIL 0830 HRS 5 DEC 43.	26 Nov 43	17 Dec 43
3RD CHARGE - AA 24(2) LOSING BY NEGLECT HIS CLOTHING, (2 JERSEY PULLOVERS AND 1 VEST WOOLEN)	5 Dec 43	17 Dec 43
Signature of Officer making entry.		
VIII.—Second Trial.		
Signature of Officer making entry.		

IX.—C.O.'s remarks and recommendations on First Trial.

Date		Signature

X.—Confirming Officer's remarks and recommendations on First Trial.

Date		Signature

CHARGE SHEET

The accused, D-46226 Private Henri OUELLETTE of R. 22e R., attached to Canadian Medical Rest Station, a soldier of the Canadian Army Overseas, is charged with when on active service:

First Charge
Section 18(4)
Army Act

STEALING PUBLIC PROPERTY

in that he

in the Field, in Sicily, during the night of 25/26 Nov 43, did steal 28 jersey pullovers, 3 shirts Angola, 10 blankets G.S., public property, from the Quartermaster Stores of Canadian Medical Rest Station, the said articles being of the value of £17-11-6.

Second Charge
Section 15(1)
Army Act

ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the Field, in Sicily, on 26 Nov 43, when detailed for guard duty, absented himself without leave from 0900 hours, 26 Nov 43, until 0830 hours, 5 Dec 43. (Absent 9 days, 11 hours, 30 minutes.)

Third Charge
Section 24(2)
Army Act

LOSING BY NEGLECT HIS CLOTHING

in that he,

in the Field, in Sicily, at approximately 0900 hours, 5 Dec 43, was deficient,

Article	Vocabulary Value
2 jersey pullovers	£ 0 - 13 - 6
1 vest woolen	£ 0 - 5 - 1
Total Value	£ 0 - 18 - 7

"MS" "AD"

75% of the Vocabulary price of which is £ 0 - 13 - 11.

"F.C. Pace"
(F.C. Pace) Major
Commanding,
Canadian Medical Rest Station.

In the Field
13 Dec 43.

Approved on behalf of JAG Cdn Army Overseas pursuant to Overseas MO 2223 and KR(Can) 540

In the Field
16 Dec 43.

"Anne Des Rosiers" Capt.,
A.D.J.A. CDN CORPS

To be tried by Field General Court Martial.

"E.A. McCusker"
(E.A. McCusker) Brigadier
D.D.M.S. 1 Cdn Corps.

In the Field
16 Dec 43.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40/PAS/1697 (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) 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-46226	Private		Henri	OUELLETTE	~~R~~ 22e R attached Cdn Medical Rest Station

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 ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and one "EAMcC"
(*date*) ..... 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)~~ "EAMcC"

(*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~~. "EAMcC"

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

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	Magnus STENCE	16 Cdn FDS RCAMC

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	M F HILLARY	1 Cdn Corps Tps Wkshop RCOC
Lieutenant	Geoffrey MORGAN-DAVIES	HQ 1 Cdn Corps

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieutenant	To be detailed by OC 1 Cdn Med Rest Station	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Captain	A Des Rosiers	ADJA 1 Cdn Corps

On Active Service in the Fd

in Sicily (Country.)

"E.A. McCusker"
(E.A. McCusker)
(*Signed personally. RP 105 fn 2.*)

Brigadier (Rank.)

Date 16 Dec 43

Commanding DDMS 1 Cdn Corps
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 (NC) D-46226

(Rank) Pte (Name) Oulette H.J. (Unit) R. 22nd Regt

and in my opinion he is fit/~~unfit~~ to undergo trial by court-martial.

In the Field.

Date 17/12/43

"P.M. Spence" Capt. RCAMC
(Signature of M.O.)

"AD"

D-6226 Pte Henri Ouellette, R 22 R att ~~#~~ 1 C.M.R.S.

The prosecutor informs the Court that the accused's unit has never been furnished with particulars of service and conduct sheets of the accused, and therefore cannot produce M.F.M. 6 or completed M.F.B. 355.

Address in mitigation of punishment by defending Officer.

The acc. has pleaded guilty to all charges and knows he'll get justice.

He appears to have no previous convictions.

Asks clemency of Court. He has willingly admitted his offences thereby facilitating the administration of justice.

"A"

SUMMARY OF EVIDENCE IN THE CASE OF D-46226 Pte. Henri Ouellette. (R 22 R) on the strength of #1 Cdn Med Rest Station, a soldier of the Cdn Army Overseas.

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

Do you object to Capt. A. Des Rosiers RCA HQ 1 Cdn Corps as interpreter

The interpreter is sworn. Answer NO

First Witness for the Prosecution

5640A R.S.M. Jack Howarth 64 S.I.B. a soldier of the British Army Overseas having been duly sworn, states as follows:

On the 6th Dec 1943 as a result of information obtained I interviewed the accused. I told him who I was and the nature of my inquiry and cautioned him as follows. You are not obliged to say anything unless you wish to do so, but anything you do say will be taken down in writing and may be given in evidence.

The accused read over the caution which he signed. I then wrote the statement down at his dictation which he read over and signed in my presence together with that of Sgt. Jim Eyres.

Statement produced, read and marked as exhibit "A" and initialed.

I am sure the accused understood the statement when he read and signed it.

Cross examined by the accused

Q.1. Is it not a fact that when you asked me whether or not I understood English I answered, "No. not much"

A.1. That is correct. I told him that anything he did not understand, to ask me again.

"J. Howarth" R.S.M.

13/12/43

64 Section

Special Investigation Branch

Exhibit "A"

~~Statement~~

"Magnus Spence, Maj" "AD"

Second Witness for the Prosecution

5180875 Sgt Jim Eyres 64 Sec S.I.B.

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 of evidence and marked exhibit "B"

Having regard to the exigiencies of the service, attendance of this witness cannot be readily procured, in my opinion.

"J.E. Campbell" Lieut.
Officer detailed to
take the Summary of Evidence.

"B"

The accused does not demand the attendance of this witness for cross-examination.

Third witness for the prosecution

F-41644 C.Q.M.S. Stewart Condon of the #1 Cdn Med Rest Station a soldier of the Cdn Army Overseas having being duly sworn states as follows:

On the morning of 26 Nov 1943 I went to the stores of No 1 Cdn Med Rest Station and in company with my storeman discovered that some articles were missing, to wit;

28 jersey pullovers
3 shirt angola (collars attached)
10 blankets, G.S.

These articles were part of the stock on hand, their value at that time was £17-11-6

On investigating with my storeman we discovered that the screen of a window in the back room of the stores was torn from the top. Going outside, this window we found tracks of foot-steps right along side of the window. On the previous day I had occasion to notice that this screen was in good order.

There are two doors to the stores. When I left the stores at approx. 2045 hrs on 25 Nov 1943 one door was bolted from the inside and the other I locked from the outside with a pad-lock.

"AD"
"GG"

(sheet 3 of summary)

I gave the key at 2230 hrs to one of the storemen who slept there that night.

On 5 Dec 1943 at approx 0900 hrs I inspected the kit of the accused and found him deficient:

2 jersey pullovers	Value	13/6
1 vest woollen		5/1
	Total value	18/7

The accused declines to cross-examine this witness

"S. Condon"
C.Q.M.S. for C.M.R.S.

Fourth witness for the prosecution

G-7016 Sgt Harry French (R.C.A.) of the #1 C.M.R.S. a soldier of the Cdn Army Overseas having being duly sworn states as follows:

At approx 1030 hrs on 25 Nov 43 I personally detailed the accused for guard duty from 1600 hrs 25 Nov 43 to 1600 hrs 26 Nov 43. At approx 0900 hrs on 26 Nov 43, acting on information received I searched the camp area for the accused but he was no where to be found. I did not see him until 5 Dec 43 at approx 0830 hrs.

The accused declines to cross-examine this witness.

"H.C. French" (Sgt)
1 C.M.R.S.

Fifth Witness for the Prosecution

K-57093 Cpl. T. H. Smith of the 1 Cdn Med Rest Stat.

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 of evidence and marked exhibit "C"

"AD" "MS"

Having regard to the exigiencies of the service, attendance of this witness cannot in my opinion be readily procured.

"J.E. Campbell" Lieut
Officer detailed to
take the Summary of Evidence.

(page 4 of original summary)

The accused does not the attendance of this witness for cross-examination.

Sixth Witness for the Prosecution

M-7358 C.S.M. David W. Fox of the 1 Cdn Med Rest Stat a soldier of the Cdn Army Overseas having being duly sworn states as follows:

On 5 Dec 43 at approx 0830 hrs acting on information received I went to the kitchen where I found the accused. He had been missing for some 10 days previous. I immediately had him put under close arrest and ordered C.Q.M.S. Condon to inspect his kit.

The accused declines to cross-examines the witness.

"David W. Fox."

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

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

"AD" "MS"

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

"J.E. Campbell" Lieut.
Officer to take the Summary of Evidence.

EXHIBIT "A" "JEC"

G4 Section,
Special Investigation Branch,
Corps of Military Police

Statement of: - No. D/46226 Pte. H. OUELLETTE,
22nd Rail Regiment
Canadian Forces.

Who saith: I have been cautioned that I am not obliged to say anything unless I wish to do so, but that anything I do say will be taken down in writing and may be given in evidence.

"H. Ouellette"

I have been at this Rest Centre for about a month and came from the 5th Canadian General Hospital. I know a Pte. Skilton who was a good friend of mine. About 10 days ago Skilton approached me and asked me if I would like to go with him and do a break. I agreed. We both went together to the Q.M. Stores at the Rest Centre. Skilton then went in the store through the door which was not locked while I stayed outside keeping watch. About 10 minutes later Skilton came out of the stores carrying a big bundle. We then went up the road and about half a mile from the Centre he gave me about 10 blankets and about 10 jerseys. From there I walked to Catania. A short distance afterwards we left each other and I gave him back all the blankets and jerseys. I then went down to town and stayed at a house. I would be unable to find this house again. I later returned to my unit and gave myself up

"AY" "MS"

I have had this statement read over to me, it is true, and is made quite voluntarily, and no persuasion, enducement or thought has been used or held over me.

"H Ouellette"

Statement taken and signature witnessed by me in the presence of Sgt. Eyres, S.I.B. on 6th December, 1943.

"J. Howarth" RSM

EXHIBIT "B" "JEC"

No. 64 Section,
Special Investigation Branch,
Corps of Military Police,
C.M.F.

STATEMENT OF : - No. 5180875 Sergeant Eyres, J.
No. 64 Section,
Special Investigation Branch,

WHO SAITH :- About 16.00 hours on 6th. December 1943, I was present when No. D/46226 Pte. Ouellette was interviewed at No.1. Canadian Medical Rest Station, I heard R.S.M. Howorth caution him, and I saw him sign a statement which he had made.

I later interviewed No. F/49827 Pte. Skilton and I cautioned him. He said, 'I have nothing to say'.

About 10.00 hours, 7th. December 1943, I served a copy of Ouallettes' statement on Pte. Skilton. He said, ' I have nothing further to say'.

In the Field "J. Eyers", Sergeant.
"AD" 7th. December 1943. Special Investigation Branch.

"MS"

EXHIBIT "G" "JEJ" 26 Nov 43

Documentary

At 0600 hours 26 Nov 43. D-46226 Pte Oulette H. was absent when I called him to relieve the sentry then on duty. To the best of my knowledge he was absent until _____ hours

"K 57043 Cpl. Smith J.H."

Guard Commander.

"MS" "AD"

EXHIBIT "B" "AD"

M.F.B. 355
22M—5-41 (372-3)
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)
D46226	Pte	OUELLETTE, Henri	R22R.

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, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

Record of service not available.

Within last 12 months		Since enlistment or appointment	
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.

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

2. The accused has not been previously convicted N/A

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 xxxxx xxxx beginning on the xday of xx~~

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 12 "JEC" days in Air Force military custody, making a total of 12 "JEC" days in custody, of which 8 "JEC" days were spent in hospital.

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

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

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

8. The accused is entitled to reckon ~~years~~ ~~2-5/12~~ "JEC" 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.

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

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

Completely deleted "AD"

RECORD FORM E - PROCEEDINGS ON CONVICTION BEFORE SENTENCE

E.1. No change Ans No Sir

E.2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), ~~a certified true copy (copies) of Conduct Sheet(s)~~(2) "AD" 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 this document(s) refers to the accused, because "AD" (i) ~~they~~ it purports to be signed in the manner required by AA 163(1)(g)(h), and (ii) ~~they~~ it purports to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" ~~A, B, ... respectively~~ "AD"

E.3. President to Accused: Do you wish to address the Court on the Statement(s) ~~and Conduct Sheet(s)~~ and in mitigation of punishment,
Ans. Yes, my defending will speak in my behalf.

E.4. No change.

E.5. No change

SCHEDULE

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

Accused: D-46226 Pte Henri Guellette

Charge	Plea	Finding
1st AA 18(4)	Guilty	Guilty
2nd AA 15(1)	Guilty	Guilty
3rd AA 24(2)	Guilty	Guilty

~~At present under sentence for.....beginning on.....~~ "AD"

Time in confinement awaiting present trial - a total of 12 days of which 8 days were spent in hospital.

Sentence Awarded by the Court:

TO UNDERGO DETENTION FOR 12 MONTHS AND TO BE PUT UNDER STOPPAGES OF PAY UNTIL HE HAS MADE GOOD THE VALUE OF THE FOLLOWING ARTICLES viz:

2 JERSEY 13/ 6
1 VEST WOOLLEN 5/ 1

TOTAL VALUE (75%) 13/11

(Sgd) "A. Des Rosiers Capt" Judge-Advocate, if any.

17/12/43 Date awarded

(Sgd) "Magnus Spence Maj" President RCAMC

PART II MINUTE WHERE CONFIRMATION RESERVED.

N/A

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

Confirmed.

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

(Sgd) "E.A. McCusker"

Date 19 Dec 43

E.A. McCusker, Brig.
Commanding D.D.M.S., 1 Cdn Corps
Confirming Officer.

PART IV PROMULGATED AND EXTRACTS TAKEN

Accused	Date	Signature of Offr
D-46226 Pte Guellette H. R 22 R.	Dec 21/43	"Magnus Spence" Major RCAMC OC No. 16 Cdn F.D.S.

5H-75

Pb Ouellette J E.

SCHEDULE.

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

Accused: B92345 Pte Joseph Edward Ouellette 2 Cdn C 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	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 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:

Fourteen day field Punishment and fourteen days forfeiture of pay.

(Sgd) ..... Judge-Advocate, if any. 6 Apr 45 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 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.)

Date 9 Apr 45 (Sgd) ..... Lt-Col Commanding Comd R.C.A.S.C.2 Cdn Corps Tps Confirming Officer.

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

Accused.	Date.	Signature of Offr.
B.92345 Pte Ouellette J E	10 Apr 45	Major 2 Cdn C Tpt Coy RCASC

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 5H-75

CPA98 (In lieu of CPA83) 43-P & S-1608 (2604)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Major E. K. Morris Comd RCASC 2 Cdn C Tps dated 5 Apr 1945

RECEIVED 15 MAY 1945 JAG BRANCH CMHQ

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 (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 92345	Pte	Joseph Edward	Ouellette	2 Cdn C Tpt Coy RCASC

PROCEEDINGS REVIEWED

PROCEEDINGS OF TRIAL.

REVIEWING OFFICER, JAG BRANCH

Held in the Fd in (country) Holland on (date(s)) 6 Apr 1945

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 28184.

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 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 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 an interpreter?~~ Ans ~~Yes~~ No

The Interpreter is sworn.(1) ~~Do you object to an shorthand writer? Ans Yes~~ ~~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	W. G. Ross	HQ RCASC 2 Cdn C Tps
Member	Capt.	W. J. Hill	34 Cdn C Tpt Coy RCASC
Member	2/Lt.	J. A. McKay	HQ RCASC 2 Cdn C Tps
Judge-Advocate			
Prosecutor	Capt.	R. E. Viscount	2 Cdn C Tpt Coy RCASC
Defending Offr	Capt.	R. P. Oglesby	2 Cdn C Tpt Coy RCASC

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 AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (~~severally~~) 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 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 ....., 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 [redacted] 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 ..... charge(s).(2) The Court is closed, and considers the subraission.(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. 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 ..... 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 .....
(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 bearing the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex C 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 74(2). 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 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.

6 Apr 45

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this day examined No. B 92345 Pte Ouellette J E 2 Cdn C Tpt Coy RCASC

and find him fit to undergo trial By Court Martial

Insert "fit" or "unfit"

Capt.
Signature of the 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 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-92345	Pte		JOSEPH, EDWARD,	OUELLETTE	2 Cdn C Tpt Coy 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) 5 April 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	W C Ross	HQ RCASC 2 Cdn C Tps

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	W S Hill	34 Cdn C Tps Comp Coy RCASC
Lt	F A McKay	HQ RCASC 2 Cdn C Tps

WAITING MEMBER.

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

JUDGE-ADVOCATE.

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

On Active Service in the Fd

in HOLLAND (Country.)

(Signed personally. RP 105 fn 2.) (K E Morris) Major (Rank.)

Dat 5 April 45

A/Commanding RCASC 2 Cdn C Tps Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

4/38A CFA 95 (In lieu of AFA 3) 40/P & S/1697 (6143)

THE ACCUSED HAS ELECTED TRIAL BY COURT MARTIAL
CHARGE SHEET

The accused, B.92345 Pte Ouellette J E, 2 Cdn Corps Tpt Coy RCASC, a soldier of the Canadian Army Overseas is charged with:

FIRST 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, in Holland, at 1345 hrs 29 Mar 45 did neglect to have his Sten Gun No. B.0.831472 in a clean condition.

In the field
29 Mar 45

Capt
(J R Hennessey)
A/Officer Comd 2 Cdn C Tpt Coy RCASC

To be tried by Field General Court Martial

(K E Morris) Major
A/Comd RCASC 2 Cdn C Tps

5 Apr 45

1st Witness for Prosecution

Sworn states:

No 16435 Sgt Paul, Cecil William
2 Cdn C Tpt Coy RCASC, H.Q. Pl. Sgt.

On 29 Mar ~~in the morning~~ at 1345 hrs I inspected pl weapons. The accused was ~~and~~ on parade. I found his weapon dirty, the breach block ~~showed~~ gas fouling. I took the accused's sten gun from him and have had it in my custody since then. (Sten gun introduced marked exhibit "A" and identified by witness as belonging to Rd Ouellette J.E.)

I kept this weapon in a security box from 29 Mar until now.

C.W. Paul

Cross Examined

What was the purpose of afternoon parade
To check Bl weapons
This was a regular parade
Fouling was natural on face of breach block on the weapon. The gas fouling has not increased since 29 Mar.

It would be not possible for such gas fouling to accumulate if the weapon had been properly cleaned and not ~~since~~ fired since.

Objected by Pros.

RP 83(B) complied with

1.D First Witness for Defence: 2.

B 12345 Pte Ouellette J.E. 28 Coln C. Tpt Coy
RCASC. I am motorcycle dist in H.Q. Pl.

On 28 March 1945 I fired about 85 rounds from my sten gun after which I cleaned it by pulling a pull through through the barrel and using hot water. I was on duty that night and was ~~and~~ allowed to and did sleep until 0900 hrs 29 Mar. I cleaned my sten again at 0945 hrs. On the 1300 hrs ~~29 Mar~~ parad the same day Sgt Paul pointed out to me that it was rusty and warned me for orderly room next morning. After parade I told Sgt Paul the weapon was not dirty and when about to ask him to show it to someone else he walked away. Gas fouling can come back on a weapon in a day but ~~not~~ I wouldn't say in 2 or 3 hours.

Cross examined

At the time of inspection the weapon was not dirty. There was oil on the breach block from the previous day & and it had the color of rust. ~~the~~ I cleaned the barrell and face of the breach block only ~~when~~ at 0945 hrs 29 Mar. The sten gun was

duty when I was up for orders last
30 March 45. I know that I have
to clean my weapon daily and do
so when I can.

J. Burnett

RP 83(B) complied with.

2.D.

Second witness for 4th Defence.

A 20484 L/Cpl Tofflemire B. S. 2 Cdn C. Tpt Coy RCASC (Cdn states:) I am L/Cpl 1/c motorcyclists at Coy H.Q.

I marched P to Ouelette for afternoon parade ~~at~~ at about 0940 hrs 29 Mar at about 1000 hrs I saw P to Ouelette dismantle his gun and clean it but I did not inspect it.

Cross examined

Q. To what extent did you see P to Ouelette clean the weapon?

A. Going over the small parts and cleaning the breach with a cloth.

A20484
Lcpl Tofflemire B.S.

RP 83 B complied with

3D Third Within for Defence.

Jones H. 2 Cdn C. 7 pts
Sworn states:
P72310 Pte Jones H. 2 Cdn C. 7 pts
Coy R C of C. I am in obeyd chst
at Coy H Q.

I saw Pte Ouelette, clean his
weapon on 28 Mar, after the firing it on the range
and I inspected
his weapon on 29 Mar about
two hours before the afternoon
parade. The breach block was
then clean.

Mass Examined

I man with Pte Ouelette at 0945 hrs.
29 Mar ~~and~~ when cleaning his
weapon he took it all apart. Pte
Ouelette wiped the whole bolt
I saw him do.

Jones H

R.P. 83 B complied with.

4D

6.

Fourth Witness for Defence

B 84444 Pte Turriff. J. 2 Cdn C
Tpt Coy RCASC, swom states: I am a tourman at
Q M Stores coy. H. Q.

On Mar 28/45 after firing 160 rounds a man
Lt. Pettigrew inspected Pte Ouelette's
sten gun. I was standing next
to Pte Ouelette and saw him
~~weapon~~ ~~[illegible]~~ ~~[illegible]~~ inspected weapon ~~[illegible]~~ block on dall.

No cross examination.

J. Turriff

RP83B complied with.

B 92345 Pte Ouellette J E

Defence Summary

Handed in by Defending Officer

The defense wishes to sum up the evidence given and apply it to the charge which states that Pte Ouellette "did neglect to have his Sten Gun No. BO 831472 in a clean condition". It is therefore necessary for the prosecution to prove that there was neglect.

Funk and Wagnall's dictionary defines the word "neglect" as "1. to fail to treat with attention, 2. to ignore 3. to fail to perform through carelessness or oversight". Evidence of all witnesses points to the fact that Pte Ouelette paid a great deal of attention to cleaning his weapon after firing, that he did not ignore it when warned there would be an inspection, and that he did not perform his work carelessly or overlook essential points. He definitely claims that on the morning of the parade he wiped the face of the breech block. Knowing that the parade was called particularly for the purpose of inspecting weapons, it is hardly likely to suppose that he would have allowed rust to remain while he was working on that very piece.

The weapon was approved by an inspecting officer the preceding day after having been fired and cleaned; it was then given two more cleanings. All this attention was given to it by a motorcyclist who was on duty until midnight the day preceding the inspection. Sgt Paul's actions might well have been based on a matter of opinion, but the defence claims that the weapon had received attention and the witnesses have stated that there was no evidence of neglect in the true sense of the word.

PROSECUTION SUMMARY - Handed in by Defending Officer Prosecutor

The witness Pte. Jones stated very definitely that he saw Pte. Ouellette take his sten apart and wipe the bolt over very carefully.
Pte. Ouellette stated that he did not wipe the bolt off and that the dirt Sgt. Paul saw was rusty coloured oil on the bolt, that he hadn't wiped off.
Pte. Tofflemire saw the accused wipe his weapon over but did not see it in detail.
So the value of the witness may well be questioned.
The Sgt found the weapon dirty enough to lay a charge.
The accused admitted that the weapon was dirty the next morning when he was up for orders and also that at the inspection there was rusty oil on the bolt.
The weapon had during all this time been kept in a dry security box, but the weapon was on production to the court found to be very rusty and dirty.
So that while the facts produced by the prosecution are consistant with evidence shown there are conflicting statements by the witnesses for the defense.

Ex A sten. gun is returned to the unit by the court.

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 92345	Pte	Ouellette J E	2 Cdn C Tpt Coy RCASC

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 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 40 - An Act 1 times	4 times
For	times	times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct.

x 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 20 Nil ABO days in civil custody, and 10 Nil ABO days in military custody, making a total of 20 Nil ABO days, of which 10 Nil ABO 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 commission / attestation specified in his record of service / attestation paper is 2 Sep 41

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). 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

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

W1.57657/1519 20M. 5/44. P. Ltd. TS1-3.

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

No B92345 Name OUELLETTE Joseph Edward | Sqn, Battery, or Company | Corps R C A S C | Date of enlistment 2Sep41 | GC 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	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet destroyed 26 Aug 44; Last entry 24 Aug 43; nil cases of drunkenness									
Field	7Feb43	Pte		Sec 40 AA Neglect "Failed to carry out guard duties	CSM Stuart	28 days FP 28 days pay FRI 149 (2)	8 Feb43	Maj Morris	2 days pay FRI 149 lb
Field	15May43	Pte		Sec 40 AA Neglect "Dirty Rifle"	Sgt Rutherford CSM West	3 days pay FRI 149 (2)	15May43	Maj Morris	
Field	1Jul43	Pte		Sec 40 AA Neglect "Norecord"	Documentary	5 days pay FRI 149 (2)	24Aug43	Maj Morris	
Field	17Feb 45	Pte		Sec 40 AA An Act - Did take and use WD Veh without proper auth	Sgt Ferguson Cpl Neal	28 days pay FRI 149 (2)	19 Feb45	Maj Morris	

CERTIFIED TRUE COPY OF ORIGINAL FROM DOCUMENTS KEPT IN MY CUSTODY

R P Oglesby Capt.

(PTO)

No B92345 Name OUELLETTE Joseph Edward | Sqn, Battery, or Company | Corps R C A S C | Date of enlistment 2Sep41 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAM/136 (3428)

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	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet destroyed 26 Aug 44; Last entry 24 Aug 43; nil cases of drunkenness									
Field	7Feb43	Pte		Sec 40 AA Neglect "Failed to carry out guard duties	CSM Stuart	28 days FP 28 days pay FRI 149 (2)	8 Feb43	Maj Morris	2 days pay FRI 149 1b
Field	15May43	Pte		Sec 40 AA Neglect "Dirty Rifle"	Sgt Rutherford CSM West	3 days pay FRI 149 (2)	15May43	Maj Morris	
Field	1Jul43	Pte		Sec 40 AA Neglect "Norecord"	Documentary	5 days pay FRI 149 (2)	24Aug43	Maj Morris	
Field	17Feb 45	Pte		Sec 40 AA An Act - Did take and use WD Veh without proper auth	Sgt Ferguson Cpl Neal	28 days pay FRI 149 (2)	19 Feb45	Maj Morris	

CERTIFIED TRUE COPY OF ORIGINAL
FROM DOCUMENTS KEPT IN MY CUSTODY

R P Eglesby Capt.

(PTO)

Summary of evidence in the case of B 92345 Pte Ouellette J.E., 2 Cdn Corps Tpt Coy RCASC charged with NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE (Sec 40 AA)

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

First Witness

M.16435 A/Sgt Paul C.W., 2 Cdn C Tpt Coy RCASC, sworn, states: At approx 1345 hrs 29 Mar 45 I held an inspection of all small arms assigned to Company Headquarters personnel after they had been given previous warning of the inspection. I found Sten B.O.831472 belonging to B92345 Pte Ouellette J E to be in an unclean condition. The breach block showed evidence of gas fouling from the previous day's firing. Since I had warned the personnel in the morning that I expected the weapons to be clean I placed Pte Ouellette under open arrest and laid the charge.

The accused declines to cross examine this witness.

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 desire to give evidence on oath

The accused, B.92345 Pte Ouellette J.E., 2 Cdn C Tpt Coy RCASC, sworn, states: Firstly I was not on the morning parade mentioned by Sgt Paul but I was warned at 0940 hrs by L/Cpl Tofflemire of the parade at 1345 hrs. When Sgt Paul made the inspection he came up to me and pointed out that my gun was dirty. He told me that I was on a charge and that I would be up for orderly room the next morning. When I got to the HQ Platoon orderly room right after the parade I tried to explain to Sgt Paul that my gun was clean. I said, "That gun is not dirty. There's no reason for me being charged". I was going to ask him to show the weapon to someone else so that they could judge whether or not it was dirty. He gave me no time to say anything more because he left immediately saying "Goodbye gentlemen" to Pte Jones and I. I cleaned my weapon in the morning at about 1000 hrs. L/Cpl Tofflemire and Pte Jones were both there when I cleaned it. Since I had been on the range the day previous I oiled my weapon after I cleaned it to prevent rust but the oil in the breach changed to the color of rust from the time I cleaned it to the time of the parade. There was no rust on the weapon whatsoever. At the time of the inspection when Sgt Paul claimed the weapon was dirty, he pointed to the breach and said, "That is rust" but he was mistaken. Almost two years ago my weapon was found dirty on an inspection and since then I have made sure that it would always be as clean as possible.

The accused states that he desires to call A 20484 L/Cpl Tofflemire B.S., 2 Cdn C Tpt Coy RCASC, as a witness in his behalf:

A 20484 L/Cpl Tofflemire B.S., 2 Cdn C Tpt Coy RCASC sworn, states:

At approx 0945 hrs 29 Mar 45 I warned Pte Ouellette to be ready for an inspection by Sgt Paul after dinner. I saw him clean his weapon about 1000 hrs but I did not inspect it.

A20484 L/Cpl Tofflemire B.S.

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), (F) and (G) (13) have been complied with.

In the field
30 Mar 45

A R Swanson Lt
(A R Swanson) Lieut
2 Cdn C Tpt Coy RCASC

5-I-95

Tpr. Ouellette J. B.

RECORDED AT CMHQ IN AB 169

5 I-95

FIELD GENERAL COURT-MARTIAL

4/38B

Convening Officer (Command) Brig J S H Lind DSO Comd 3 C B R G dated 29 Apr 45

SCHEDULE.

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

Accused: L 364967 Trooper John Baptiste Ouellette

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 AB 24 (1) MO	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 79 days, of which 21 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) ..... Judge-Advocate, if any. Date awarded. (Sgd) D C MacDougall 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 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.~~ (1) (1. AA 57A. Delete if not used.)

(Sgd) ..... D. Lind Brig.

Date 1 May 45 Commanding 3 CBRGp Confirming Officer.

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

Accused. Date. Signature of Offr.

L364967 Trooper OUELLETTE, John Baptiste 9 C B R Bn — MAY 02 1945 — 3

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 10 MAY 1945 D.J.A.G. C.M.H.Q.

PROCEEDINGS REVIEWED 28 May 45 REVIEWING OFFICER, 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 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/Appmt.	Full Christian Names.	Surname.	Unit.
L-364967	Tpr Pte	John Baptiste	Ouellette	9 C B R Bn

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 30 April 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 30/109

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 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(1) 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 (~~are~~) brought before the Court. At 10 30 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 ~~No~~

~~The Interpreter is sworn.~~(1) ~~Do you object to ..... 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, 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	D C MacDougall	9 C B R Bn
Member	Capt	H A Lamm	9 C B R Bn
Member	Lieut	C H Barr	HQ 3 C B R G
Judge-Advocate	Capt	R R Brown	9 C B R Bn
Prosecutor	Lieut	J R Firth	9 C B R Bn
Defending Offr	Lieut	J D Baltzan	9 C B R Bn

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 D1 p 3.)

A8. The accused L-364967 Tpr Ouellette J B 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 seperately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and findings are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 name 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.

HQ 3 CBRG Vol 1 P 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 .....(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 B 5 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 APS. 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. 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 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.

CHARGE SHEET

The accused, L.36987 Tpr John Baptiste OUELLETTE, X-4 List CAC, on strength 9 Cdn Base Rft Bn, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Army Act
Sec 40

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

in that he

In the Field, in Belgium, on or about 20 Feb 45, did by night disturb inhabitants of the country in which he was serving by climbing up a drain pipe and entering a dwelling house.

In the Field,
Apr 45.

(H.W. Rick) Lt-Col.,
Comd
9 Cdn Base Rft Bn.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field,
29 Apr 45

(J.S.H. Lind) Brig
Comd
3 Cdn Base Rft Gp

CHARGE SHEET

The accused, 1.36987 Tpr John Baptiste OUELLETTE, A-4 list CAC, on strength 9 Cdn Base Rft Bn, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Army Act
Sec 40

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

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Apr 45.

(H.C. Rick) Lt-Col.,
Comd
9 Cdn Base Rft Bn.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field,
29 Apr 45

(J.S.M. Lind) Brig
Comd
3 Cdn Base Rft Gp

Mike Dougall my President

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-36987	Tpr		John Baptiste	OUELLETTE	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*) 29 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 requi..d 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	D C MacDOUGALL	CAC 9 CBR Bn

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by 9 CBR Bn	
Capt or Lt	To be detailed by 9 CBR Bn	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lt	To be detailed by 9 CBR Bn	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	R.R. Brown	HQ 3 CBR Gp

On Active Service in the Fd

in BELGIUM (*Country.*)

(*Signed personally. RP 105 fn 2.*) Brig (*Rank.*)

(J S H Lind)

Dat 29 Apr 45

Commanding 3 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 3) 40/F & S/1697 (6143)

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

Former Deputy Judge Advocate President

MEDICAL OFFICERS CERTIFICATE

(MR(Gas) Form 557)

I certify that I have this day examined L 36987 (No.)

TPR. Ouellette J B. (Rank) (Name) and in my opinion he is

FIT to undergo trial by Court-Martial

Station

Date 30/4/45.

Thomas Wangall my President

J A Simon Capt
Medical Officer
Unit 30 Apr/45

E.X.A.
Homer Daughty my President

SUMMARY OF EVIDENCE

In the case of L-38987 Tpr. Ouellette J.B. on strength of 26 Coy. 9 Bn. 3 C.B.R.G.

By directionof the Commanding Officer the evidence is taken on oath.

FIRST WITNESS A-27109 L/Cpl. Robins K.E. of 2 Cdn. L. of C. provost coy.

I certify that the presence of A-27109 L/Cpl. Robins K.E. is owing to expenses and loss of time involved not readily procurable and that his statement signed by him has been read over to the accused. Marked Exhibit "A" and signed by me.

.....F. Dysart Lt.....
(F. DYSART) Lieut.
Officer detailed to take
The Summary of Evidence.

I do not require the presence of L-27109 L/Cpl. Robins K.E. for purposes of cross-examination.

...J.B. Ouellette.....
(L-36987 Tpr.OUELLETTE J.E.

SECOND WITNESS TRANSLATION OF FRENCH STATEMENT obtained on the 20th of April 1945 from DE VREESE Maurice-Joseph (born in Ghent, on the 26th December 1881) and living Kortrykstreet, 48 Ghent.

BEGINS:

On the 20th. February 1945, it was 2300 hrs when my wife and I were in our bedroom. My wife did observe me she heard some noise at the window and I answered her to look for it. All the windows were closed and at the same moment I also heard a noise; so I left my bed in order to see what happened.

I opened the window calling out : "Who is there?". Somebody answered something which I could not understand. Thereup I told my wife that the noise was comming from the left side and she then opened another window. She saw a man (a soldier) standing on the plat-form. There was a very clear moonshine and I immediately saw it was a Canadian Soldier.

My wife asked the soldier what he did there, and he answered: "Cava bien". I asked my wife to keep and eye upon the soldier, while I was looking after M.P. Two M.P.'s accompanied me to [illegible] house and apprehended the above soldier, who already was inside my home.

During the time I left the house for the MP., the a/m soldier had climbed along the pipe, which conducts the rainwater from the roof towards the cistern, and forcing it by his own weight, he fall upon the platform.

After about 15 minutes he stood up. broke a pane of a window-door, and entered my house. I was there that he was picked up by the M.P.

Q.1 Do you recognise the soldier who is now present in your house, as being the same who broke in in the night of 20th. Feb. 45 ?

A. Yes, I formally recognize him.

Q.2. (Sentence by the accused)
Where did you see me for the first time?

(CONT'D PAGE 2)

SECOND WITNESS Continued

A. Upon the platform.

(Sgd) Maurice DE VREESE.

Certified true translation
from French into English.

(Sgd).G..Vanden.Abeele

Gaston Van den Abeele,
Interpreter,
SIS Can Prov C 2 CBRG

I certify that the above statement is a true copy from the translation made by Gaston Van den Abeele, of the Statement of Mr. Maurice DE VREESE attached hereto, signed by me, and Marked Exhibit "B".

.....
(F. DYSART) Lieut.
Officer detailed to take
the Summary of Evidence.

THIRD WITNESS

TRANSLATION OF FRENCH STATEMENT obtained on the 20th of April 1945 from SERVRANCKX Gabrielle, wife of DE VREESE Maurice (born in Veurne, on the 15th December 1897)and living Kortrykstreet, 48 Ghent.

DEPONS:

On the 20th. February 1945, my husband and I were in our bedroom and about 23.45 hrs. I heard a noise since some moments, like somebody striking a window. I left my bed and opening a window I called out "HALLO". Somebody answered me but I could understand anything.

I then went to another window and saw a canadien soldier upon the platform, holding a stick in his hand. I asked him: "What are you doing there?". He answered me: "Ca va tres bien".

I told my husband to look after the M.P. in the street, while I kept an eye upon the soldier. I told the soldier "to sit down", and that my husband was looking after a ladder.

Thereafter he climbed along the pipe which conducts the rainwater from the roof towards the cistern, but at the time he put his feet upon the small window-sill, the pipe broke and he fell down.

As he was without consciousness, I went to the streetdoor to see if my husband did not arrive. When after a ten minutes, I returned to the soldier, at that time accompanied by the M.P., I saw him sitting in the stairs. He entered my house by breaking a pane of a window-door. The M.P. then pirked him up. Some time after, the M.P. once more entered my house, to proceed for an investigation.

Q.1. Did you hear the soldier, who is now present in your house, breaking a pane of the window-door?

A. No, as at that time I was at the frondoor of my house.

Q.2. Do you recognize the soldier who is now present in your house, as being the same who broke in the night of 20/2/45 ?

(CONT'D PAGE 3)

THIRD WITNESS Continued Yes, I formally recognise him. Gmw.

(Sgd) G. DE VREESE

CERTIFIED TRUE TRANSLATION
FROM FRENCH INTO ENGLISH

(Sgd) G. Van den abeele
.....

Gaston Van den abeele,
Interpreter,
SIS Cdn Prov C 2 CBRG

I certify that the above statement is a true copy from the translation made by Gaston Van den abeele of the statement of SERVRANCKX, Gabrielle,(wife of DE VREESE, Maurice,) attached hereto, signed by me, and Marked Exhibit "B".

F Dysart Lt.
.....
(F. DYSART) Lieut.,
Officer detailed to take
The Summary of Evidence.

FOURTH WITNESS Gaston Van den abeele, interpreter with SIS Cdn. Prov. Corps, 2 CBRG, having been duly sworn states:

I certify that the above statements of DEVREESE, Maurice, Joseph, and SERVRANCKX, Gabrielle are to the best of my ability the translation from their statements in French which are submitted herewitt as Exhibit "B" and Exhibit "C" respectively.

Certified to be a true copy of the original statement.
[illegible] Capt Adjt, 9 CBRBn.

.....
(GASTON VAN DEN ABEELE)

THE ACCUSED WAS CAUTIONED AS FOLLOW:

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 make any statement and reserves his 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 Rules of Proceedure 4(c)(d)(e) and (f)(g) have been complied with.

F Dysart Lt.
.....
(F. DYSART) Lieut,
Officer detailed to take
the Summary of Evidence.

In the Field,
21 April 1945

CHARGE

Army Form B 252
(See King's Regulations)

9 Bn. 2 C.B.R.G. Regiment

45 Coy Battery / Squadron / Troop or Company

CHARGE against No. L.36987 Rank Pte

Name OUELLETTE J.B.

Place Ghent Date of Offence 20 Feb 45

OFFENCE WOAS: Damage to Civilian Property,

(2) Breaking & Entering. (3) Abroad After Military Curfew.

GHENT DET.
2 CON. L. of C.
PROVOST COY

Sgt
i/c Ghent Detachment

Names of Witnesses :— A.27109 L/Cpl Robins K.E.
B.67378 L/Cpl Sibley R.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

Disposal of charge to be forwarded to Formation HQ.

P.T.O.

20420. Wt.W15452/2262. 1,757,000. 5/44. K. & B., Ltd. G.657/47.

This is Exhibit "A" referred to in the summary of Evidence in the case of L.36987 Pte Ouellette J.B. taken before me this 21 day of Feb 45

Officer taking summary

EVIDENCE

Statement of Evidence in the Case of
L.36987 Pte Ouellette J.B.

Sir,

At Ghent, on 20 Feb 45, in answer to a call received at approx 2330 Hrs, I accompanied by L/C Sibley proceeded to a civilian house, at 48 Kortrykschestraat. On arrival, I entered the house, and found a soldier who complained that his leg was broken and couldn't walk. further investigation revealed, that the above soldier had climbed up a drain pipe to the flat roof of a building and had attempted to climb up another drain pipe to the top of the other building, when the drain pipe had given away and the soldier had fallen approx 10 Feet to the roof of the first building. According to statements obtained from civilians living in the building, he had broken the window and entered their house, (see statements attached).

I placed him under close arrest and escorted him to No 2 Con Gen Hospital where he was admitted pending examination of the Medical Officer the following day, I took his particulars and found him to be the above soldier. A live body receipt was obtained and is now held on file at this Detachment HQ.

K Robins

A.27109 L/C Robins K.E.

I have read over and corroborate the above statement.

REMARKS

21 Feb 45. B.67378 L/C Sibley R.B.

DEVREESE Maurice-Joseph.
né à Gand le 26-12-1881
Hortrijkstraat, 48,
Gand.

Gand, le 20 avril 1945.

Dm

Le 20 février 1945, à ma femme et moi nous étions au lit à environ 23.00 heures. Ma femme me faisait remarquer qu'elle entendait un bruit de fenêtre et je lui répondais d'aller voir. Les fenêtres étaient fermées et à ce même moment j'entends aussi un bruit, et je saute de mon lit pour examiner.

J'ouvre la fenêtre donnant sur le jardin et je crie : "Qui est là ?". On répondait quelque chose que je ne comprenais pas. Sur ce je dis à ma ~~fenetre~~ femme que ce bruit vient du côté gauche et ma femme ouvre l'autre fenetre. Elle voit un homme (un soldat) sur la plateforme. Il y avait un beau clair de lune et je reconnaissais desuite que c'était un soldat canadien.

(~~J'ai encore vu ce même soldat~~)

Ma femme lui demandait ce qu'il faisait là, et le soldat répondait "Ça va bien".

Je demandais à ma femme de tenir le soldat à l'oeil pendant que j'allais chercher la M.P. - Deux M.P. m'ont accompagné jusque chez moi et ont appréhendé le soldat qui se trouvait déjà à l'intérieur de la maison.

Pendant que j'allais chercher la police, le soldat en question avait grimpé le long

du tuyau de l'écoulement des eaux de la toiture, mais sous son poids, il l'a arraché complètement de sorte qu'il retombait sur la plateforme.

Après un quart heure il se levait, cassait un carreau d'une porte-fenêtre et entrait comme cela dans ~~sa~~ demeure.

C'est là que la M.P. est venue se rendre maître du susdit soldat.

Q1: Est-ce que vous reconnaissez le soldat présent à votre déclaration, comme étant celui qui s'est introduit dans votre demeure la nuit du 20 février 1945?

Rép: oui, je le reconnais formellement.

Q2: Sentence by the accused.

Quand m'avez-vous la première fois et où étais-je?

Rép: sur la plateforme.

Maurice D. Preuss

Statement taken down by:
Gaston Van den abeele,
Interpreter
SIS. Cdn Prov. C. 2 CBRG.

This is Exhibit "B" referred to in the summary of Evidence in the case of L 36987 Tpr Oullette J B taken before me this 22 April 1945

J Dysart Lt
Officer detailed to take summary of Evidence

DWW.

Second Witness having been duly sworn

TRANSLATION OF FRENCH STATEMENT obtained on the 20th of April 1945 from DE VREESE Maurice-Joseph (born in Ghent, on the 26th December 1881) and living Kortrykstreet, 48, Ghent.

BEGINS :

On the 20th February 1945, it was 2300hrs when my wife and I were in our bedroom. My wife did observe me she heard some noice at the window and I answered her to look for it. All the windows were closed and at the same moment I also heard a noice; so I left my bed in order to see what happened.

I opened the window calling out : "Who is there?". Somebody answered something which I could not understand. Thereup I told my wife that the noice was coming from the left side and she then opened another window. She saw a man (a soldier) standing on the platform. There was a very clear moonshine and I immediately saw it was a canadian soldier.

My wife asked the soldier what he did there, and he answered : "Oa va bien". I asked my wife to keep an eye upon the soldier, while I was looking after M.P. Two M.P.'s accompanied me to my house and apprehended the above soldier, who already was inside my home.

During the time I left the house for the M.P., the a/m soldier had climbed along the pipe, which conducts the rainwater from the roof towards the cistern, and forcing it by his own weight, he fell upon the platform.

After about 15 minutes he stood up, broke a pane of a window-door, and entered my house. It was there that he was picked up by the M.P.

Q 1. Do you recognize the soldier who is now present in your house, as the same who broke in in the night of 20th, Feb.45?
A. Yes, I formally recognize him.

Q 2. (Sentence by the accused)
Where did you see me for the first time ?
A. Upon the platform.

(Sgd) Maurice DE VREESE.

CERTIFIED TRUE TRANSLATION
FROM FRENCH INTO ENGLISH.

.....

Gaston Van den abeele,
Interpreter,
SIS Cdn Prov C 2CBRG.

Fourth Witness Gaston Van den abeele, Interpreter with 515 Cdn Prov C 2 C B R Bgs having been duly sworn states:

I certify that the above statements of Devreese Maurice Joseph and Lavranchx Gabrielle are to the best of my ability true translations from their statements in French ~~there~~ which are ~~attached~~ submitted herewith as Exhibit B & Exhibit C respectively.

Signed [signature]
Gaston Van den ~~abeel~~ abeele.

Amw

SERVRANCKX Gabriëlle
Née à Veurne, le 15-12-1897
rue de Courtrai, 48
Gand.

Gand, le 20 avril 1945.

Le 20 février 1945, il était environ 23.15 hs quand mon mari et moi nous étions au lit. J'entendais depuis quelques moments un bruit, comme de quelqu'un tapant sur une fenêtre. Je me levais pour aller voir et en ouvrant la fenetre je criais "Allo. J'entendais que quelqu'un me répondait sans toutefois pouvoir comprendre.

J'allais alors à l'autre fenêtre et je voyais un soldat canadien sur la plate-forme avec un bâton en main. Je lui demandais Qu'est-ce que vous faites-là? et il me repondais "Ça va très bien"

Je disais à mon mari d'aller avertir la M.P. ici dans la rue, pendant que moi je tenais le soldat à l'oeil. Je racontais au soldat de "Sit down", que mon mari allait chercher une échelle.

Après il a grimpé le long des tuyaux d'écoulement de l'eau du toit. et il parvint à mettre le pied sur la petite fenêtre; je le repoussais autant que possible et en mettant son second pied sur la fenêtre, qu'il a tombé.

Il s'est évanoui et sur ce temps

j'allais voir si mon mari n'arrivait pas encore. Quand après quelques (10) minutes je revenais accompagné de l'M.P. voir G.S.W. où se trouvait le soldat, je trouvais celui-ci assis sur l'escalier et ils l'ont emmené G.S.W. Il s'était donc introduit dans ma demeure en brisant un carreau d'une porte-fenêtre.

Quelque temps après la police est entré pour l'enquête. ~~et l'ont appréhendé~~ G.S.W.

Q1: Avez-vous entendu, que le soldat qui est présent à votre déclaration, a cassé le carreau de la porte-fenêtre?

Rep: Non, je me trouvais à ce moment à la porte d'entrée de ma maison.

Q2: Reconnaissez-vous le soldat qui est ici présent, comme étant le même qui s'est introduit dans votre maison la nuit du 20 février 1945?

Rep: Oui, je le reconnais formellement.

G. Lutreche

Statement taken down by:
Gaston Van den abeele,
Interpreter,
S.I.S. Cdn Prov C. 2CBRG.

This is Exhibit "C" referred to in the Summary of Evidence in the case of 436987 Tpr Aulletto J.B. taken before me this 22 April 1945.

F Dysand
Officer detailed to take Summary of Evidence

Third Witness having been duly sworn

TRANSLATION OF FRENCH STATEMENT obtained on the 20th of April 1945 from SERVRANCKX Gabrielle, wife of DE VRIESE Maurice (born in Veurne, on the 15th December 1897) and living Kortrykstreet, 48, Ghent.

BEGINS :

On the 20th. February 1945, my husband and I were in our bedroom at about 23.45hrs. I heard a noice since some moments, like somebody striking a window. I left my bed and opening a window I called out "HALLO". Somebody answered me but I could understand anything.

I then went to another window and saw a canadian soldier upon the platform, holding a stick in his hand. I asked him : "What are you doing there?". He answered me : "Ca va tres bien".

I told my husband to look after the M.P. in the street, while I kept an eye upon the soldier. I told the soldier "to sit down", and that my husband was looking after a ladder.

Thereafter he climbed along the pipe which conducts the rainwater from the roof towards the cistern, but at the time he put his feet upon the small window-sill, the pipe broke and he fell down.

As he was without consciousness, I went to the streetdoor to see if my husband did not arrive. When after a ten minutes, I returned to the soldier, at that time accompanied by the M.P., I saw him sitting in the stairs. He entered my house by breaking a pane of a window-door. The M.P. then picked him up. Some time after, the M.P. once more entered my house, to proceed for an investigation.

Q 1. Did your hear the soldier, who is now present in your house, breaking a pane of the window-door?

A. No, as at that time I was at the frontdoor of my house.

Q 2. Do you recognize the soldier who is now present in your house, as being the same who broke in in the night of 20/2/45?

A. Yes, I formally recognize him.

(Sgd) G. DE VRIESE.

CERTIFIED TRUE TRANSLATION
FROM FRENCH INTO ENGLISH.

.....

Gaston Van den abeele,
Interpreter,
SIS Cdn Prov C 2CBRG.

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).*
L-36087	Pte	OUELLETTE J.H.	C Bn, 3 C.I.B.G.

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 6 times.

For AA 4C (Using MD Veh. without P. 2 times.

For AA 4C Liquor in boiler room 1 times.

For ~~AA 4C Liquor in boiler room~~ times.

Date of first entry in Field Conduct Sheet 2-1-42

Date of last entry in Field Conduct Sheet 20-2-45

~~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 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 NO days in civil custody; and for ~~60~~ 70 days in military custody, *i.e.*, NO days in open arrest, ~~60~~ 70 days in close arrest; of which 57 days were spent in hospital.

E. B. Macdougall Maj
President

5. The present age of the accused is 26

6. The date of his attestation is 21 May 41

~~enlisting up for military service~~

7. The service which the accused is allowed to reckon is 4 yrs 11 mos.

8. The accused is in possession of† CVSM 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.*

[27833] Wt.24930/3404 24,000 7/44 A.S.E.W.Ltd. Gp.698 Forms/B.296(War)/3

No. L36987 Name OUELLETTE J.B. Sqn, Battery, or Company 1st SHEET DESTROYED 22-11-41 Corps Date of enlistment 21-5-41 GC Badges nil Service or Proficiency Pay n/a 3/17 MFM 6 (AFB 122) 40/PAS/136 (5413)

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 Sheet No Signature OC Company, etc JStevens 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
Debert	2-1-42	Pte		AWL from 2200 hrs 2-1-42 to 2100 hrs 6-1-42 (3 days, 23 hrs) AA15(1)	L/Cpl Love E.	Fined 5 days Pay FR&I149(2)	6-1-42	Lt/Col W.A Cripps	For 4 dys p. FR&I149(1)a
Borden	9-11-42	Pte		Furlough Warrant A168129					
Borden	1-11-42	Pte		AWL from 1-11-42 to 7-11-42 from furlough (3d,8h) AA 15(1)	Cpl Marutl	F9days pay AA 42(0)	7-11-42	Lt/Col. WA Cripps	For 6 days p FR&I 149(1)a
Borden	14-11-42	Pte		AA 40 Liquor in boiler room	RSM Jukes Tpr Walsh	3 days CB	21-11-42	Capt Stevens	
Borden	2[illegible]-2-43	Tpr		AWL from 0600 hrs 20-2-43 to 0600 hrs 21-2-43 (day) AA 15(1)	Cpl Young	5 days CB	22-2-43	Lt/Col Crisp	1 Days p. FR&I 149(1)
Borden	9-6-41	Tpr		AWL from 0600 hrs 9-6-43 to 1545 hrs 9-6-43 (9 h, 45 m,) AA 15(1)	Cpl Adel	8 Days Pay	9-6-43	Maj Carson	1 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	1 May 44	Tpr		WOAS-AWL fr.0730 hrs. to 2330 hrs 1 May 44. Absent 16 hrs AA 15(1)	Gd.Rm Report SSM McAlister Documentary	10 Days FP 10 Days Pay FR&I 149(2)	3May 44	H.C. Friffin Lt.-Col.	Forf 10 days pay FR&I 149
Field	19-11-44	Tpr.		AA 40 Conduct to the prejudice., using a WD vehicle without permis.	Sgt Shane Cpl Walker Tpr Shaw	Forf 21 days p. FR&I 149(2)	21-11-44	"H.W.H."	
FIELD	25-11-44	Tpr.		AA 40 Using a WD vehicle without permission.	Cpl Hogan CSM Owens	28 D.P. FR&I 149(2)	27-11-44	"H.W.H."	
~~Field~~	~~20 Feb 45~~	~~Tpr.~~		~~WOAS Sec.15(1) AWL. Sec 6(d) Breaking and Entering Sec 41 Damage to Civilian Property~~	Documentary				

CERTIFIED TRUE EXTRACT FROM THE REGIMENTAL BOOKS HELD IN MY CUSTODY

Ex "C"
To Edward Dugall my president

(C.L. NELSON) Capt.
Adjt.
9 Bn. 3 C.B.R.G.

Plea of Extigation
in the case of L-36987 Pte. Ouellette J.

The accused joined the Army 21 May 41, came to England 24 Jun. 43, landed in France 3 Sept. 44 with the 4th M. C. Unit.

On the nite in question the accused who had just come to C. B. R. D. from Ostend where his Unit was stationed, decided to go to Ghent and look the town over with a friend of his. At the last moment his friend was put on guard and was unable to go, so he decided to go alone. He went to a Cafe and had three or four cognacs and from then on he doesn't remember anything very clearly. He has never been this way before and cannot understand how it happened unless it was bad cognac.

The first clear recollection he has of any of the incident was in the X Ray Room where he found that he had two broken heels from a fall. He was in the Hospital from 20 Feb 45 to 14 Apr. 45 under Close Arrest.

The Accused is very sorry for all the trouble caused and wants to pay for any damage caused.

Signed — J. O. Ouellette

RECEIPT FOR CHARGE SHEET AND SUMMARY OF EVIDENCE (MML. Ch 5 Sec 5 SS 24)

I hereby acknowledge that I have this date 24 APR 1945 received from 4BN 3CBRG one copy of Charge Sheet and Summary of Evidence referring to charge(s) of AA Sec 41

for which I was remanded for Court-Martial.

J. B. Ouellette
(Signature of Accused)

REQUEST FOR DEFENDING OFFICER (MML. Ch 5 Sec 5 SS 27)

I hereby request that LT. BALFOUR - 26 Coy if available, act in my defence. If this officer is not available, I request that the Commanding Officer of _____ (Unit) Appoint an Officer to act on my behalf.

J. B. Ouellette
(Signature of Accused)

I hereby certify that Lt Balfour (Rank and name) was appointed to defend L36987 Tpr Ouellette J. B (Number, Rank and name) at his forthcoming trial by Court-Martial and that the said H. Balfour (Rank and name) was notified that he was to act as defending Officer on 25 Apr (Date).

[signature] CAPT & ADJT.
(Adjt of Unit) 4 BN 3 CBRG

WHEN PROSECUTING OFFICER POSSESSES LEGAL QUALIFICATIONS (MML. Ch 5 Sec 5 SS 25)

I hereby certify that I have been duly warned that the prosecutor is an officer possessing legal qualifications.

J. B. Ouellette
(Signature of Accused)

END

FIRST

SIDE


44.71


44.71

START

SECOND

SIDE

4I-129

PTE QUELLET J.C.E.

8

24
EM

Last "D"

SCHEDULE.

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

Accused: E 46968 Pte Joseph Charles Eugene Ouellet

	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	3c 12 (1)(a)	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) ~~4~~ (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 be imprisoned with hard labour for eighteen months

(Sgd) ..... Judge-Advocate, if any. 17 Nov 44 Date awarded. (Sgd) J R Cameron 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(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:

Finding and sentence 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) ..... Commanding

Date 17 Nov 44

Confirming Officer.

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

Accused.	Date.	Signature of Offr.
E 46968 Pte Joseph Charles Eugene Ouellet	22 Nov 44	J R Cameron Major

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160

RECEIVED 27 DEC 1944 JAG BRANCH CMHQ

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AFA3) 40-P & S-1638 (2864)

Convened by Order of Brig JPE Bernatchez Comd 5 C I B dated 15 Nov 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.
E 46968	Pte	Joseph Charles Eugene	Ouellet	22 Fd Regt

Prosecuting Officer, JAG Branch, CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 16 Nov 44.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

2E-119

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.(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 Dr 37th Pte Theriault, J M R.A.M.C. as interpreter? Ans No

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	J R Cameron	W N S R
Member	Capt	C R Segee	C Y R
Member	Capt	R Desrosiers	R 22 R
Judge-Advocate			
Prosecutor	Lieut	P E Vincent	R 22 R
Defending Offr	Lieut	M R D A St Pierre	R 22 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 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 E 46968 Pte Ouellette J C E 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 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 RaP 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 (are) no amendment, to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule. Apptt number + spelling of name of accused corrected by

(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.

F65 AH/1244

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~~ 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 your 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) No
(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)~~ No
(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 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 Four 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(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 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 .....(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, as to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 130, 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

E 46968. Joseph Charles Eugene Ouellet
The accused E 46168 Pte ~~J.C.E. OUELLETTE~~ a soldier of the Royal 22e Regiment Canadian Army Overseas CMF on active service is charged with:-

First Charge
AA. Sec 15(1)(a)

WHEN ON ACTIVE SERVICE
DESERTING HIS MAJESTY'S SERVICE
In that he
In the field, in Italy on the 20 Oct 44 at apprx 1230 hrs whilst serving in a forward area with his platoon, absented himself without leave with intent to avoid so serving until he surrendered himself at 4 Bn C.B.R.Gp. at 0800 hrs the 26th Oct, 44

Total Absence:- 5 days 19 hrs 30 min

(G.A.TURCOT) Major
T/COMMANDING ROYAL 22e REGIMENT

In the Field
20 Oct 44

"TO BE TRIED BY FIELD GENERAL COURT MARTIAL"

Comd 3 Can Inf Bde

In the Field
7 Nov 44
15/45

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40/PAR/1697 (2803)

(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.
E 46968		Pte	Joseph Charles Eugene	OUELLET	R22R

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 Nov 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	J R Cameron	WNSR

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	C R Segee	CYR
Capt	R Desrivieres	R22R

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	J J M Jarry	WNSR

JUDGE-ADVOCATE.

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

On Active Service in the Fd

in Italy (Country.)

(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Date 15 Nov 44

Commanding 3 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

F46965

Pte Ouellet J.C.E. R. 22 R.

for the field

16-11-44

M Dandenault capt

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this morning examined No. E 469 68

Rank Pte. Name Cuillet J. C. E. of R. 22 R.

and in my opinion he is FIT/~~[illegible]~~ to undergo trial by Court Martial

Station In the field

Date 17-11-44

J Dendenault Capt
(MEDICAL OFFICER)

Page 1.

First Witness for the Prosecution:

D38043 A/sgt Cotmoir A.A. R22R Sworn

States:—

On the 20th Oct 1944 I was A/CSM of "A" Coy. I recognize the accused as ~~[illegible]~~ one of my Coy. On the 20th Oct 44 when I went to Coy. Hq. I saw Ouellett who was near the door. I asked him "What he was doing there?" He told me that he wanted to see the Maj. Awhile later I saw Ouellette go ~~in~~ towards the rear with one of his friends. I asked him where he was going. He told me he was going to the ~~Bn. Hq.~~ Bn. Hq. I asked him if he had seen the Maj. and he said, "No." I told him to go back to his pl. and he didn't answer because the other who was with him started to talk. Awhile later Cpl. Gagnon reported Ouellett absent. It was then 1230 hrs. I saw Ouellett again ~~at~~ in the hands of the Provost, on the 31st Oct. 44.

Question by the Defence:

Q - What did you do or say when Ouellette asked to see the Maj.

A - I told him to go and see the Maj.

Q. - Is that the normal procedure when a man asks to be paraded to his Coy Comd.?

A. - In action there is no Coy. office to parade the men.

Q. ~~When you asked for Ouellette if he had permission to go to Bn. Hq. did he answer you.~~

A. Question by the Comd.

Q. Who was with Ouellett when he started for Bn. Hq.?

A. Pte. Legare

Q. What was A Coy. doing on 20th Oct.

A. We were in an advance position.

Q. - Where you in contact with the enemy? le

A. The other side of the ~~of~~ river about 000 yds. away there were enemy S.A. weapons firing upon us. (R.P. 83(b) complied with)

2nd. Witness for the Prosecution:

E 19543 A/cpl. Gagnon L. R22R. Sworn states:-

On 20 Oct. 44 I was A/sgt. of 8 pl. I recognize the accused as Ouellette, who was in my pl. on 20 Oct. at about ~~14~~ le 0730 hrs on same date we ~~had to take~~ were ~~up~~ in a position in front of a small village ~~after which~~ when le we received an order to advance. Pte Ouellette came to me and told me he was sick and couldn't go forward. I told him to try and make an effort. He ~~followed~~ came with le us in his section right up to a position more advanced. We made a small attack and he was always ~~followed~~ le in his section. We took position in a house a bit to the rear where afterwards I checked the pl. and I saw Ouellette, he was looking sick. I asked him how he felt. He answered I am sick and my nerves are finished. I told him to tough it a bit more and when he has a chance to go and see the S.B.'s. A bit later, after dinner I checked the pl. again and found that Ouellette was gone. I saw him next the 3rd ~~Oct.~~ le Nov. It was about 1200 hrs or 1230 hrs. when I first noticed Ouellette gone, I am not sure of the exact time for I had no watch.

~~Question by the Defence~~

Cross examination by the Defence:

Q - How long has the accused been under your command?

A. - About 3 weeks.

Q - ~~Have he been~~ Have you been in action with him before?

A. - Yes.

Q. - What kind of a soldier is he in action?

A. - He is a very good soldier in action.

Q - During the attack on the 20 oct. how did he by act?

A. - I didn't notice.

Q - In action did you ever have any trouble with Ouellette?

A. - No.

Q When you told ~~the S.B.~~ Ouellette to go see the the S.B.s did you specify any particular time?

A. - No. (R.P. 83 (b) complied with)

3rd. Witness for prosecution:

D118489 Cpl. Dubreuil A. R22R sworn states:-

On 20 Oct 44 I was sec Comd. of No. 5 Sec., 8 Pl. I recognize the accused as pte. Ouellette. About 1230, 20 Oct 44 after making an attack I received the order from the pl. comd. for my men to dig in. I then went to my sec. and I found Pte Ouellette gone. This was about 1230. ~~At~~ I saw him again about the 2nd of Nov. when I was sent to get him for a parade to the Coy. Comd.

No cross examination by the Defence.

(R.P. 83 (b) complied with)

4th Witness for the prosecution.

Lieut. P.E. Vincent R22R sworn states:

I am an officer of the R22R. I produce certificate under A.A. Sec. 63 I.S. in the case of E46968 Pte. Ouellett J.C.C. ~~Certificate~~

Certificate admitted in evidence marked Exhibit "A" initiated by the president and attached to the proceedings.

No cross-examination.

(R.P. 83 (b) complied with,

Statement in Mitigation of Punishment.

It is obvious from the evidence brought forth that the accused has been in the Regt. and in action for a considerable time, and that during that time has served and accomplished his duties very well. On his MFN 6 there is only one very slight charge and that a year old. His only offence therefore is that he returned from a static line because he was ill. A fact well brought forth by his own pl. Sgt. and that he left only after the attack was finished. An attack which he went through even though being ill. Therefore I ask the court to take these facts into consideration and to be lenient in their sentence.

Prosecuting & defending officer were both given opportunity to make closing address but declined to do so

Court assembled 0930 hr 16 Nov 44 and adjourned this case to 0930 hr 17 Nov 44, — same members being present

CERTIFICATE UNDER ARMY ACT, SECTION 163 (1) (i).

I Capt. R.E. Dawson certify that E46168 PTE QUELETTE JOE of the R22nd Regiment surrendered himself to 921075 Sgt. Bouchard A. 4 Bn. ICBRG at 0800 HRS on the 26th day of October 1944 as an ~~deserter (or~~ absentee without (cause). HE WAS SOBER & WEARING KINGS UNIFORM absent 5 jours. 19 hrs 30 m.

Capt. "A" Date 26 Oct 1944 Signature R.E. Dawson Capt. Adjt. 4 Bn ICBRG pr

E "B" C

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
E.46968	Pte	J.C.E. OSELLETTE	Royal 22° Regiment

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 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	NIL times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

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

or

There are no entries in the conduct sheets of the accused. N/A.

2. The accused has not been previously convicted, or N/A.

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 N/A day of N/A.

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and 15 days in military custody, making a total of 15 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 21 years.

6. The date of his ~~commission~~ / attestation specified in his ~~record of service~~ / attestation paper is 21 June 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A 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)). N/A

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 N/A, and in his regiment (or corps or department) the rank of N/A dated N/A.

(*18239) Wt.15832/144 125,000 6/41 A.&E.W.Ltd. Gp.498

MFM 6
(AFB 132)
40/P&S/136 (3438)

TAKEN FROM MFM 4 ON 3 MAY 44

No E46968 Name OVELLE J.C.E. Sqn. Battery or Company Corps C.I.C. Date of enlistment 21 June 42 QC 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 OC Company, etc J. Seymour 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
FIELD	30/10/42	Pte	—		Documentary Sgt Bernier	5 days Pay FR&I 149 (2) 7 days C B			For 3 days Pay FR&I 149 (1)
FIELD	18-8-43	Pte	—	HWL - 2 days 22 hrs.					

Certified True Copy from Regt'l Books in my possession

[signature] Adjutant
ROYAL 22e REGIMENT, C.A.C.

(PTO)

SUMMARY OF EVIDENCE

IN THE CASE OF :

E 46168 Pte J.C.E. OUELLETTE Royal 22nd Regt, a soldier of Cnd Army Overseas

By direction of the Commanding Officer the summary is taken under oath.

FIRST WITNESS For the prosecution — D 38043 A/sgt Cotnoir AA R22R. having been duly sworn states:

At about 1230 hrs on the 20 Oct, 44 acting as C.S.M. I saw Pte Ouellette at the Coy H.Q. while his Pln was under enemy fire. I asked him what he was doing there and he told me he wants to, see the Coy Comdr. About ten minutes later I saw Pte Ouellette with one of his friend going on the opposite way of the frontline. I asked him where he was going and he answered that he was going to Bn H.Q. I asked him if he had the permission of the Coy. Comdr. Pte Ouellette did not answer because his friend Pte Legare answered NO. I told him that there was only one thing t to do and that was to go his Pln. A few minutes later Cpl Gagnon reported xxx to me that Pte Ouellette was absent I did not see him again until about the 31st Oct;44

Sgt Cotnoir AA

The accused declines to cross examine the witness

SECOND WITNESS For the prosecution — E 19543 A/cpl Gagnon L R22R. having been duly sworn states:

At about 0730 hrs on the 20 Oct 44, acting as Pln Sgt, Pte Ouellette came to me and said he could not go any further. As we were going forward I told him to try that we were not going very far. Then we left and he follo wed up the forward position We made an attack and then we xxx xxxx we came back to the position where we started from Then I notice that Pte Ouellette seemed not to be very well I asked him now he was feeling and he said that he was sick and his nerves were down. I told him, to go xx and see the Stretcher Bearer, and that I would tell it to the Pln Comdr So he left and that his the last I've seen of him until the 3 Nov 44.

Lionard Gagnon

The accused declines to cross examine witness

QUESTION BY THE OFFICER TAKIN SUMMARY

QUESTION 1 - Do you know if Pte Ouellette reported to the Stretcher Bearers ?

ANSWER 1- I dont know

QUESTION 2 - Did you, report him absent.

ANSWER 2 - Yes, I reported him absent at about 1230 hrs to the C.S.M. who told me he had seen Ouellette at the Coy H.Q. and he had told Pte Ouellette to go back to his Pln.

THIRD WITNESS For the prose cution

D 118489 Cpl Dubreuil A R22R having been duly sworn states:

At about 1230 hrs on the 20 Oct, 44 After we had made an attack I recieved orders from my Pln Comdr to have the men in my section dig in. I came to my section to transmit the order and then I noticed the absence of PteOuellette I did not see him again until he was paraded befor e the Coy Comdr. around the 2nd Nov 44.

G Dubreuil

The accused declines to cross examine the witness

FOURTH WITNESS For the prose- cution

Lieut P.A. Tremblay Royal 22nd Regt. having been duly sworn state:

I am Lieut P.A. Tremblay adjudant of the Royal 22nd Regt. I hereby produce the following document: Certificate under Army Act Section 163(1)(j) This document certify that E 46168 Pte Ouellette J.C.E. of the Royal 22nd Regt. surrended himself to G 21078 Sgt bouchard A at 4 Bn C.B.R.Gp. at 0800 hrs on the 26th day of October 44 as an absentee without leave He was sober and wearing King's uniform. This certificate is duly signe by Capt A.E. Davidson adjudant 4 Bn C.B.R.Gp. I certify that this document came to me through normal channel.

P.A. Tremblay Lt

The accused declines to cross examine the witness

Certificate of surrender attache and marked exhibit "A"

Claymore Lt.

QUESTION TO THE ACCUSED

Do you wish to make any statement or give evidence upon oath You are not obliged to do so but any statement you make or any evidence you give will be taken down in writing and may be used as evidence.

ANSWERED BY THE ACCUSED

I reserve my defence

J.C.E. Ouellette

The accused has been cautioned in French according to R.O.1424

I certify that the foregoing summary has been taken down by me in the presence and hearing of the accused and that R.P. 4(c)(d)(e)(f)(g) have been complied with.

D Sagnon Lt

OFFICER DETAILED TO TAKE SUMMARY

IN THE FIELD

LIST OF WITNESSES FOR THE PROSECUTION

Intthe case of:-

E 46168 Pte J.C.E. OUELLETTE Royal 22e Regiment

FOR THE PROSECUTION

Lieut	P.A.	Tremblay	Royal 22e Regiment
D 38043	A/sgt	Cotnoir AA	Royal 22e Regiment
D 118489	Cpl	Dubreuil A	Royal 22e Regiment
E 19543	A/cpl	Gagnon L	Royal 22e Regiment

FOR THE DEFENCE

NIL

LIST OF EXHIBIT

1- Exhibit "A" Certificate of surrender under AA 163 (1)(j)

I Hereby acknowledge receipt of a true copy of a summary of evidence taken prior to my trial by FGCM. I furthermore acknowledge receipt of a true copy of a charge sheet upon wich I am being brought into Court-Martial.

I desire the services of _____

If he is available.

In the Field
5 Nov 44

J C E Ouellet

UU-108 (case #3)

PTE OUELLETTE J.R.

See B-43 for 1st case
" C-208 " 2nd "

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) ..... (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 one year

(Sgd) ..... Judge-Advocate, if any. 2 Nov 43 Date awarded. (Sgd) F. D. Tweedie 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 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. Get-Yeamil-Jour (4) months detention

I ~~direct that the accused be not committed to prison or detention barracks until further ordered~~.

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

(Sgd) J. G. Roberts Maj-Gen

Date 2 Nov 43. Commanding Cdn. Rft. Units Confirming Officer.

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

Accused.	Date.	Signature of Offr.
E. 14377 Pte Ouellette J.R.	4 Nov. 43.	J.C. Tweedie Lt. Col. C.A.I. HQ 1 CBOD

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

HH-108

CFA98 (In lieu of AFA3) (D.P.S. 8-71668-(2604))

FIELD GENERAL COURT-MARTIAL

Convened by Order of Maj-Gen J.G. Roberts,DSO,MC. Comd Cdn Rft Units dated 30 Oct 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) 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.
E-14377	Proceedings Reviewed Pte 26 Nov 43 W.H. Waugh Capt Reviewing Officer (J.A.G.) C.M.H.Q.	Joseph Romeo	OUELLETTE	2 CGPC (Att HQ 1 CBOD)

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 2 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 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 A95, 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.(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(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to Lieut R.A. Austin as interpreter ? Ans No.

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, 187, 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	HQ CRU
Member	Capt.	J.E. Jamcomb.	HQ C-RU
Member	Lieut	E.W. Dodd	HQ. C.R.U.
Judge-Advocate			
Prosecutor	Capt	J.G. McIver	1 CBOD
Defending Offr	Lieut	A.J. Crawford	1 CBOD.

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

D2. The Prosecutor makes (~~no~~) (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 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(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 A and Ex 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. 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 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, 136, 182, RP 46-50, 69, 118, 119(A), KR Can 306, 330, 563-566, Overseas RO 309, 1323, MML p 90, 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.

CHARGE SHEET

The accused, No. E 14377, Pte. Ouellette, J.R., 2 C.G.P.C., attached to Headquarters, 1 Canadian Base Ordnance Depot, a soldier of the Canadian Army, Overseas, is charged with:--

First charge
Sec. 18(4)
Army Act.

Stealing goods, the property of a person subject to military law,

in that he

at Peper Harow, on 26 Oct 43, stole nine (9) packages of Sweet Caporal cigarettes, the property of E.0242 Pte. Lavigne, W., 2 C.G.P.C. attached to Headquarters, 1 Canadian Base Ordnance Depot, a person subject to military law.

R C Kelly Lt-Col.
.....Lt-Col.
(R.C. Kelly)
O.C. Depot Battalion
1 C.B.O.D., R.C.O.C.

Peper Harow
26 Oct 43

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL.

J H Roberts
(J.H. Roberts) Maj-Gen.,
Comd
Cdn Rft Units.

In the Field,
30 Oct 43

F. 29 7.
2 Nov 43

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

I certify that I have this morning examined No. Pte (Rank) Ouellette F.R. (Name)

of HQ No. C.B.O.D and in my opinion he is fit to undergo

trial by Court Martial.

Station HQ. 1 CBOD

Date 2 Nov 1943

Sgd. C.G. Preece Capt.
Medical Officer

F.D.T.
2 Nov 43

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40/FAN/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 Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E-14377	Pte		Joseph Romeo	OUELLETTE	2 CGPC (Attd Hq 1 CBGD)

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) 30 Oct 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.

(Rank.)	(Must be named. RP 106.)	(Unit.)
LT-COL	F.D. TWEEDIE	HQ CRU.

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A CAPTAIN	FROM	HQ CRU
A LIEUT.	FROM	HQ CRU

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.)

Date 30 Oct 43

(Signed personally. RP 105 fn 2.)

(J.H. Roberts) Maj-Gen., Commanding Cdn Rft Units. (Rank.)

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

T. D. T.
2 Nov 43

First Witness for the prosecution:
E-0242 Pte Lavigne W., 2 C.G.R.C.
attached H.D. 1 C.B.O.D., sworn states:
I received a 1000 cigarettes
on Oct 26. 43. Issued 6 parcel cigarettes.
In the evening I gave 500 among
the boys in the hut. I emptied
some and gave others away. When
I finished that night there were
nine packages left, what I gave
to Pte Roy to put in his kit bag
because I had no lock for my kit.
bag. I saw him put them in his
kit bag. At about quarter to seven
in the morning I went over & asked
Pte Roy if I could get a package of
cigarettes. He gave me a key & I
opened the kit bag and there were
no cigarettes in it. Pte Le Fevre
called me over to his bed and told
me something in as a result of that
I went to an unoccupied bed next to
Le Fevre. Looked under the mattress
and found 11 packages of issued
6 parcel cigarettes.

Cross Exam: From 6 till the pub closed
on the night of Oct 26 I was at
a pub drinking. There was a crowd
there. The accused was with me.
On the way back, walking, I
saw Le Fevre. He was coming out
of the hut where I sleep with a
flash light. I did not tell you the
accused took the cigarettes. I
gave two packages of cigarettes to
the accused.

First Witness for the prosecution;
E-0242 Pte Lavigne W., 2 C.G.P.C.
attached H.D. 1 C.B.O.D., sworn states;
I received a 1000 cigarettes
on Oct 26. 43. Sweet Caporal cigarettes.
In the evening. I gave 500 among
the boys in the hut. I smoked
some and gave others away. When
I finished that night there were
nine packages left; what I gave
to Pte Roy to put in his kit bag.
because I had no lock for my kit.
bag. I saw him put them in his
kit bag. At about quarter to seven
in the morning. I went over & asked
Pte Roy if I could get a package of
cigarettes. He gave me a key & I
opened the kit bag and there were
two cigarettes in it. Pte Le Fevre
called me over to his bed and told
me something. As a result of that
I went to an unoccupied bed next to
Le Fevre. Looked under the mattress
and found 11 packages of Sweet
Caporal Cigarettes.

Cross Exam: From 6 till the pub closed
on the night of Oct 26 I was at
a pub drinking. There was a crowd
there. The accused was with me.
On the way back, walking. I
saw Le Febre. He was coming out
of the hut where I sleep with a
flash light. I did not see you the
accused take the cigarettes. I
gave two packages of cigarettes to
the accused.

J.D.L.

By the Court:- The cigarettes were in packages of 25. I left the 9 packages of cigarettes in Roy's kitbag before I went to the pub at 6 o'clock. The 11 packages found were packages of 25 cigarettes. Le Ferre was not at the pub with us. There were some boys in the hut sleeping when we went in. Le Ferre sleeps in the same hut as the accused, Roy and me. I took 8 or 9 packages ~~it~~ with me that night. F.D.T.

The evidence is read over to the witness

Second Witness for the prosecution
C-6076 Pte Roy. U. 2 C.G.P.C attached H.Q. 1 C.B.O.D sworn. states:
On Oct 26. 43 Pte Lavigne asked me to lock 9 packages of sweet Capral cigarettes in ~~his~~ my kitbag. I did. It was around 5.30 at night. Next morning Lavigne came & asked me for a couple of packages of cigarettes. I gave him the key. He went & looked in the kit bag & found no cigarettes. I went & looked myself. Found no cigarettes. By examining the kit bag I found that the stitch I had put at the top had been cut or broke. At the same time Pte Le Ferre called Lavigne to his bed. I went over too. As a result of a conversation with

F.D.T.

Le Fevre and went over to a bed, nobodys bed, just a mattress on it. Looked under the mattress & found 11 packages of Sweet Capural Cigarettes. I put the cigarettes back in my kit bag & reported to the R.S.M.

Cross Exam: I came back to the hut around 9.30 after the show. I went to bed. I did not see the accused take any cigarettes from my kit bag.

By the Court: There were two packages of Sweet Capural cigarettes of mine in the kit bag when I put Lavigne's nine packages in.

The evidence is read over to the accused.

Third Witness for the Prosecution.
E-10254 Pte. Lefebvre, W. 2 C.G.P.C. attached HQ. 1 C.B.O.D.

On the 26 Oct 43 at night around 11.45, the accused told me that he had taken cigarettes from Pte Lavigne's kit bag. We had talked about it before. The accused had said: Ill take Lavignes cigarettes. I wont put them in my kit bag because they might figure out I took them. Ill put them in yours. They wont doubt you. They will think that you bought those cigarettes

I refused. Ouellette offered me six packages if I would let him put them in my kit bag. I refused. I saw the accused put packages of cigarettes under the ~~matt~~ ress of an unoccupied bed near ~~that~~ me. Next morning around 7.50 I saw the accused and I went to the lavatory together. He offered me two more packages of cigarettes as I would not talk. At about ~~7~~ 6.45 the next morning I called Lavigne & showed him where the cigarettes were. Pte Roy was with him.

Cross Exam:- Lavigne came in the hut at about 15.30 that night. I helped him in with his bicycle. There were no lights in the hut. I used my flash light. I did not see the accused take cigarettes from Roy's kit bag. I didn't tell Lavigne about the cigarettes at night because I didn't want to wake him up. They were taken at about quarter to twelve.

By the Court: Around a quarter to twelve the night of Oct 26. I saw the accused go to an unoccupied bed, four or five feet from my bed, I ~~saw~~ watched the mattress put packages of cigarettes in it & fold the mattress up again. The blackouts were

181.

5/

~~out~~ in in the hut & there were no lights, but I could see, I swear I could see as I have told - I never quarreled with the accused.

The evidence is read over to the witness.

Fourth Witness for Prosecution:

C15607. S/Cdr. Leonard, V. P.
H. Q 1 C B O D. sworn states
At about 0745 hours 27 Oct 43 Pte Roy & Pte Lavigne made a report to me about the theft of cigarettes. At 0800 hours I went to the mens quarters. Pte Roy had shown me the cigarettes and the kit bag that Pte Roy had stitched with one stitch which had been broken. I had the accused placed under close arrest immediately. I reported to the adjutant. There were 4 packages of cigarettes in Pte Roy kit bag when I first looked at it. I took two packages & turned them over to the adjutant. They were Sweet Caporal cigarettes.

Cross exam:- I didnt find any cigarettes in the accuseds bed. Roy and Lavigne reported to me together.

JOL.

The evidence is read over to the accused.

6. Closing Address of Prosecutor.

Proven: Cigs stolen. Same number found in an unused bed. Accused told LeTebre he was going to take them; and that he had taken them. Case is clear.

Closing address for Defence:
Reviews evidence. No one saw the accused take the cigarettes.

Address in Mitigation.

PDT. Volunteered Apr 40. Overseas in 41. First offence of this nature. R

PDT.

President of the Court:

Sir:

In mitigation of sentence, I recommend leniency on behalf of Pte Ouellette; in that he volunteered for Overseas service in the Canadian Army as early as April 1940, and has been in the United Kingdom since the beginning of 1941, consequently he suffers, like many soldiers overseas, a "browned off" feeling that results from routine and inactivity.

His age prohibits him from continuing in the Unit he joined up in, and he therefore has to be content with the Pioneers.

[redacted] he has made a mistake and should be punished; [redacted] since this is the first time he has ever committed an offence such as this, I recommend that the Court be lenient.

A.J. Crawford Lieut

2 Nov 43

2 Nov 43

H.Q. 1 C.B.O.D.
27 Oct 43

To Whom It May Concern:

I, E-14377 Pte. Ouellette, J.R. wish to be represented in case of a court-martial by Capt. Hood, RCASC, 4th Brigade, 2nd. Div., Good Woolpack, Chichester.

.....Ouellette, J.R.
E.14377 Pte. Ouellette, G.R.

LIST OF WITNESSES

in the case of

E.14377 Pte. Ouellette, J.R. 2 CGPC, Att.HQ 1 CBOD

For the Prosecution

First Witness	- E.0242	Pte. Lavigne, W.	H.Q. 1 CBOD, RCOC
Second Witness	- C.6076	Pte. Roy, U.	H.Q. 1 CBOD, RCOC
Third Witness	- E10254	Pte. Lefebvre, W.	H.Q. 1 CBOD, RCOC
Fourth Witness	- C15607	S/CQr Leonard, V.P.	HQ. 1 CBOD, RCOC

For the Defence

NIL

LIST OF EXHIBITS

in the case of

E.14377 Pte. Ouellette, J.R. 2 CGPC, Att. H.Q. 1 CBOD

Exhibit "A" - Kit-bag from which cigarettes are alleged to have been stolen.

Exhibit "B" - Seven (7) packages of Sweet Caporal cigarettes.

Summary of Evidence in the case of No. E.14377, Pte. Ouellette, J.R., 2 C.O.P.C., attached to Headquarters, 1 C.B.O.D., 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. No. E.0242, Pte. Lavigne, W., 2 C.O.P.C., attached to Headquarters, 1 C.B.O.D., a soldier of the Canadian Army, Overseas, having been duly sworn states:-

"At Peper Harow, at about 1715 hours, I received a parcel containing 1000 Sweet Caporal cigarettes. I gave some out in the hut, 2 packages to Pte. Ouellette and some others to the other boys. When I had finished distributing them there were just 9 packages left. I gave these 9 to Pte. Roy to look in his kit-bag for me, as I have no lock on my kitbag. At about 0645 hours this morning 27 Oct. I wanted a smoke and asked Pte. Roy for the key to his kitbag. I opened the kitbag and there were no cigarettes in it. My 9 packages as well as 2 packages of his own had disappeared. Pte. Lefevre then called me over to his bed and told me to look under the mattress of the empty bed next to his. I looked there and found the eleven missing packages.

The accused declines to cross-examine this witness.

W. Lavigne
E.0242 Pte. Lavigne, W.

Second Witness for the prosecution. No. C.6076 Pte. Roy, U., 2 C.O.P.C. attached to Headquarters, 1 C.B.O.D., a soldier of the Canadian Army, Overseas, having been duly sworn states:-

"At Peper Harow at about 1730 hours 26 Oct 43, Pte. Lavigne, W. asked me to look 9 packages of Sweet Caporal cigarettes in my kit-bag. So I did. I also had two packages of my own, also Sweet Caporals, in the kit-bag.

This morning, 27 Oct. at about 0645 hours. Pte. Lavigne asked me for two packages of cigarettes. I gave him the key to my kit-bag. He went and looked in the kit-bag and found no cigarettes. So I went and looked myself and found no cigarettes. So I looked at the kit-bag, and found it had been torn open on the side. I mean by that that there was a gap at the top of the kit-bag after it was locked through which it was possible for a man to get his hand. I had sewed this up with string, but now I found that the string had been cut or broken. Then Pte. Lefebvre called us over to his bunk and showed us were the cigarettes were, underneath the mattress in the next bed to his. Pte. Lavigne and I then came and reported the theft to the R.S.M.

The accused declines to cross-examine this witness.

U. Roy
C.6076 Pte. Roy, U.

Third Witness for the prosecution.

E.10254, Pte. Lefebvre, W., 2 C.G.P.C. attached to Headquarters, 1 C.B.O.D., a soldier of the Canadian Army, Overseas, having been duly sworn states:-

"Last night, 26 Oct at about 2345 hours at Peper Harow, Pte. Ouellette told me that he had stolen about 12 packages of Sweet Caporal cigarettes from Pte. Lavigne, W. He offered to give me six packages if I would keep all 12 in my kit-bag. I refused. He then put the packages under the mattress on an empty bed next to mine. He said then that next night he was going out to sell them.

This morning at about 0750 hours. he offered me two packages again and I refused.

A little later this morning before breakfast I was standing by my bed. I called to Lavigne and said come over here I want to see you. I then showed him where his cigarettes were hidden. Pte. Roy came with him to see. The told me then that they were going to report to the R.S.M."

The accused declines to cross-examine this witness.

Certified True Copy of original signed statement
[illegible]

.....
E.10254 Pte. Lefebvre, W.

Fourth Witness for the prosecution.

C.15607 S/Cdr. Leonard, V.P. on strength of Headquarters, 1 C.B.O.D. a soldier of the Canadian Army, Overseas, having been duly sworn states:-

"At approximately 0745 hours 27 Oct 43 Pte. Roy reported to me the theft of cigarettes from his kit-bag. I asked him who had taken them and he said Pte. Ouellette. I immediately ordered the Orderly Sergeant to place Pte. Ouellette under close arrest. At 0800 hours I proceeded over to the men's quarters and Pte. Roy showed me his kit-bag which I now produce. (Exhibit "A") He opened his kit-bag and showed me the cigarettes, which he said had been found under the mattress. I took two packages as evidence and told Pte. Roy to keep the rest locked up in his kit-bag. At about 1530 hours Capt. McIver, who was taking a summary of evidence, told me to obtain all the cigarettes as exhibits. I was able to recover 7 packages, including the two I already had, which I produce. (Exhibit "B"). The remaining four had been obtained by Pte. Lavigne from Pte. Roy, and distributed amongst his friends..

Cross-examined by the accused.

Question 1. Sergeant-Major, when you came over this morning, did you find any cigarettes in my bed?

Answer 1. No.

Question 2. Was it Pte. Roy or Pte. Lavigne who reported to you first?

Answer 2. They both reported to-gether.

.....
C.15607 S/Cdr. Leonard, V.P.

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 make a statement and reserves his defence.

J.R. Ouellette
E.14377 Pte. Ouellette J.R.

I certify that the foregoing Summary of Evidence, consisting of three pages, wastaken 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.

I.C. McIver Capt.
I.C. McIver.
H.Q. 1 CBOD.

Peper Harow, Surrey
27 Oct 43.

M.F.M. 6

No. E14377 Name Cuellette, J.R. Sqn., Battery, or Company — Corps R.C.A.S.C. — Date of enlistment 9 Apr 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. J.H.Craig 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
Sheet destroyed 9 Oct 40: Date of last entry 29 Sep 40: Cases of drunkenness, Nil								J.H. Craig	Major
Canada	12 Dec 40	Pte		Sec.15(1)AA WOAS AWL (13 Hrs)	Lt.Houde	Admonished	18Mar 41	Major Savard	Forf.1 days pay FRI 149(1)(a)
Canada	1 Nov 40	Pte		Sec.15(1)AA WOAS AWL (5 days 21 hrs 30 mins)	Cpl Robin	7 days C.B. Forf. 7 days pay FRI 149(2(	7 Nov 40	Major Savard	Forf.6 days pay FRI 149 (1)(a)
Field	24 Apr 41	Pte		Sec.9(1)AA WOAS showing a wilful defiance of authority-whenasked to clean a room said 'I will not do it.	Cpl Basher Pte Ingles	48 days Detn.	10May41	F.G.C.M.	Forf.48 days pay FRI 149 (1)(b)

(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	28 Jul 41	Pte		Sec.40 AA (No details given)	Capt Dowling	243 Days Detn	22Aug41	F.G.C.M.	Forf.243 days pay FRI 149(1)(b)
	24 Dec 41	Pte		Released from Detention Barracks and granted 118 days remission of sentence.					Forf.2 days pay FRI 149(1)(c)
Field	1 Jun 42	Pte		Sec.15(1)AA WOAB A W L (15 hrs)	Cpl Plourde	14 days CB Forf.28 days pay FRI 149(2)	5 Jun 42	Major Savard	Forf. 1 days pay FRI 149(1)(a)
Field	16 Sep 42	Pte		Sec.11AA (No details given)	Cpl Gaudatte	14 days CB Forf.28 days pay FRI 149(2)	16Sep42	Major Savard	
Field	3 Mar 43	Pte		Sec.11AA Out of bounds i.e. in NAAFI at prohibited time.	CSM Swarbrick Sgt.Donaldson	Forf.3 days pay FRI 149(2)	4Mar43	Maj.Russell	

M.F.M. 6
(A.F.B. 122)
17554—7-41 (1219-20)
H.Q. 1772-32-1652

No. E.14377 Name Ouellette, J.R. Sqn., Battery, or Company Corp. R.C.A.S.C. Date of enlistment 9Apr 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. 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	14Aug 43..	Pte	1	Sec 19 AA WOAS Drunkenness		Forf. 21 days pay FR&I (2)	14 Aug 43.	C.C. 2Div Tps Coy	
Field	3 Sep 43	Pte		Sec 40 AA WOAS Conduct to the predjudice etc., engaged in a fight in the NAAFI	Documentary	7 days C.B.	4 Sep 43	Major J.H. Craig.	
Field	11 Sep 43.	Pte		Sec 15(1) AA WOAS AWL from 2200 hrs 11 Sep 43 to 2040 hrs 12 Sep 43. (22 hrs 40 mins)	Sgt. Flight J.M.	5 Days F.P. Forf. 5 days pay FR&I 149(2)	13 Sep 43.	Major J.H. Craig	Forf 1 day pay FR&I 149 (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 consisting of two sheets 28 Oct 43.					
				I.C.F. Low. Capt & Adjt.					
				(I.S. Culver)					
				Officer having charge of original documents.					

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-89-620
A.F.B. 266

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
E.14377	Pte.	Ouellette, J.R.R.	2 CGRC Att. HQ 1 CBOD, RCOC

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, 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.	1 times	4 times
For A.A. Sec. 40	1 times	1 times
For Drunkenness	1 times	1 times
For A.A. Sec. 11	1 times	2 times

Number of instances of gallantry or distinguished conduct Nil

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

2. 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. 73 are set out in the Schedule annexed to this statement.

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 — days in civil custody, and 6 days in military (Air Force) custody, making a total of 6 days in custody, of which — days were spent in hospital.

5. The present age of the accused according to his record of service (attestation paper) is 34 years, 8 mos.

7. The service which the accused is allowed to reckon towards discharge is 3 yrs, 6 mos. 19 days.

9. The accused is in possession of or entitled to no military decoration, or military reward

1.C.M.

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

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

dated ..... T.C.M.

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

..... Date of promotion

In the rank of xxxx

In the rank of ..... xxxx T.C.M.

In the rank of xxxx

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 E.14377 Rank Pte. Name Ouellette, J.R.R. of 2 Cdn Gen Pioneer Corps 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
F.G.C.M.	~~24 Apr 41~~ 15 May 41	Sec.9(1) A.A. showing wilful defiance of authority when asked to clean a room said 'I will not do it'.	48 days Detention	--
F.G.C.M.	~~28 Jul 41~~ 22 Aug 41	Sec.40 A.A. (no details of charge in soldier's documents)	243 days Detention	118 days 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 28th day of October, 1943 T.C.M. Capt Officer having charge of original documents

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.

43 B.

10-0-64.

Drw. J.R. Ouellette.
No 1. R.C.A.S.C. Holding Unit.

. . — — . .

Correspondence to be PINNED here.

Original

43B

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 7th day of May, 19 41.

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; *[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 hereunder named.

* Omit if not applicable.

*[illegible]:—

*(1. [illegible])

*(2. [illegible])

*(3. [illegible] service)

[illegible]—]

President.

Rank.	Name.	Regiment.
Major	D.C. Cameron	No.1 Cdn Inf Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain	J.P.W. Taylor	No.2 Cdn Inf Hldg Unit
Lieutenant	R.F. Wodehouse	No.1 Cdn Inf Hldg Unit
Lieutenant	A. Lefroy	No.3 Cdn Inf Hldg 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 L. F. [illegible] Brigadier

Commanding Cdn Base Units, Cdn Army.

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*)
E-14377 PTE. OUELLETTE, G.R. No.1 R.C.A.S.C. Hldg Unit.	First Charge A.A. Sec 9 (1) as per charge sheet	Guilty	Guilty SENTENCE To undergo detention for a period of 60 days.	I confirm the finding & sentence of the court but remit twelve (12) days of the sentence L.

* 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) L. F. Page. Brigadier (Signed) L. C. Cameron Major
Commanding Cdn Base Units, Cdn Army. *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 10th day of May 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 Court Reporter)
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 10 day of May 1941.
L. C. Cameron Major
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.~~ 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 13th day of May 19 41
L. F. Page. Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of E 14377 PTE OUELLETTE G.R.

(*a*) (Dated) 16 May 41 (Signed) [illegible]

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.

(41729) Wt. 40113—983 500 m 1/40 P. St. G. Ltd.

CHARGE SHEET.

The accused E/14377, Pte Ouellette, G. R. of No. 1. R. C. A. S. C. Holding Unit, a soldier of The Canadian Army Overseas, is charged with - W. O. A. S. -

CHARGE
SEC 9 (1)
ARMY Act

disobeying in such a manner as to show willful defiance of authority - a lawful command given personally by his superior officer, in the execution of his office -

In that he at New Martinique Barracks, Bordon, Hants, on April 27th 1941, at 1715 Hrs - when personally ordered by A/Cpl: Bosher, J. NoB/B3854 - to go to No. 3 Coy Orderly Room to wash and clean said room, did not do so, saying - "I will not do it" or words to that effect, at the same time picking up his respirator and running out of the Emergency Door.

.....
(J. M. Pocock). Lt: Col:
Commanding,
No. 1. R.C.A.S.C. Holding Unit,
Canadian Army (Overseas).

3rd May, 1941.
Bordon, Hants.

To be tried by Field General Court Martial

.....Brigadier
Commanding Cdn Base Units.

Bordon, Hants
This 7th day of May 41.

Date 10th May 1941

This is to certify that:-

No. E.14377 Name Pte Ouellette, G. R.

is fit to Undergo Court Martial.

Signed [signature]

Medical Officer.

E 14377 Pte. Ouellette, G. R., No. 1 R.C.A.S.C. Holding Unit, tried by Field General Court-Martial at Bordon, Hants., 10th May, 1941.

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

Prosecutor: Lieut. W. D. S. Careless.
Defending Officer: Lieut. J. A. Bedard.

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 B 88521 Sgt. James Lonergan, R.C.A., 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 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 - Guilty, sir.
R. P. 35(B) is complied with.
Q4 -
Do you wish to give evidence yourself or to call witnesses as to character?
A4 - I wish to give evidence, to make a statement under oath, and I wish to call Character witnesses.

Accused is sworn, and testifies as follows:
I was put on light duty for 7 days by the M. O. on the 17th of April when I came out of hospital. On the 18th I went on sick parade, and didn't work that day. On the 19th I did fatigues. On the afternoon of the 18th they had told me to go on guard but when they found out I was light duty they cancelled it. On the 20th I was ordered to do room orderly. On the 21st, 22nd and 23rd I was room orderly. On the 24th in the morning I was Room Orderly and in the afternoon of the 24th I was put on P. T., although I was still light duty. On the 26th I was put on the O.C.'s inspection and was dismissed immediately after parade and put back on fatigue. There was a sport parade called on the Saturday afternoon of the 27th, the date of the charge. I went for a walk in the afternoon and came back later. Between eight and eight fifteen I refused to comply with the order and was placed under arrest. This was night time when they wanted me to do room orderly and myself was a sick man. The next morning I went on sick parade and at 11:30 they placed me under close arrest. I didn't comply with the order because I was still sick, and the doctor the next day told me I was sick and again gave me seven days light duty.

The Prosecutor is sworn and testified as follows:
Q5 - Have you any evidence to produce as to the character and particulars of service of the accused?
A5 - A.F.B. 296 and M.F.M. 6, sir.

Q6 - Is the accused the person named in the statement which you have read?
A6 - He is, sir.
Q7 - Have you compared the contents of the above statement with the regimental books?
A7 - Yes, sir.
Q8 - Are they true copies from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?
A8 - Yes, sir.

Accused declines to cross-examine.

A/Cpl. Bosher, J. B 65834, No. 1 R.C.A.S.C. Holding Unit, was sworn as a character witness for the defence.
Q9 - Do you know the accused?
A9 - Yes. I was the one who laid the charge against him originally.
Q10- What has been your impression of the accused as a soldier generally?
A10- I have always found him willing to do any work he was told to do. I have put him on room orderly with Category and light duty men, as he was a light duty man, due to his coming out of hospital after his operation, and he has done his work well. He has always kept the rooms neat and clean.

Q11 - Do you wish to address the court?
A11 - No, sir.

The Court is closed for the consideration of the sentence.

D. C. Cameron Capt

SUMMARY OF EVIDENCE IN THE CASE OF E-14377, Pte. Ouelette, G.R. of NO. 1 R.C.A.S.C. HOLDING UNIT. CANADIAN ARMY (OVERSEAS)

THE COMMANDING OFFICER DIRECTS THAT THE EVIDENCE SHALL BE TAKEN UNDER OATH.

1st Witness. M-41554, Pte. Inglis, J.D., No. 1 R.C.A.S.C. Holding Unit, Cdn. Army, (O), No. 3 Coy. having been duly sworn, states:

"I am the runner for No 3 Training Coy., No. 1 R.C.A.S.C. Holding Unit. On Sunday 27th Apr. 41 at 1715 hrs I was detailed by C.S.M. Stone to go to A/Cpl. Bosher, J, and get a man to report to No. 3 Coy. Orderly Room, to wash and clean the said Orderly Room. I went to L. Section in F Block and gave the instructions to A/Cpl. Bosher as given to me by C.S.M. Stone. A/Cpl. Bosher then detailed Pte. Ouelette, G.R. E-14377, whom I now recognize, to go with me to clean No. 3 Coy. Orderly Room, which would take ten to fifteen minutes. Pte. Ouelette said "No, I won't do it", or words to that effect. Before anything could be said to him, Pte. Ouelette picked up his respirator and dashed out of the Emergency Door. A/Cpl. Bosher went to the Emergency Door and called "Ouellette come back". Pte. Ouellette did not appear. Another man had to be detailed for this fatigue. This is all I know about this case".

.....
(Pte. Inglis, J.D.)

Q. by Accused. "Did you not notify Pte. Nolet, R. E-22915, before notifying me?"

A. by Witness. "No. Not as an order, but as a question."

Q. by Accused. "Did you not notify me before A/Cpl. Bosher notified me?"

A. by Witness. "No, not as an order, but as a question.

2nd Witness. B-85834, A/Cpl. Bosher, J. of No. 1 R.C.A.S.C. Holding Unit, Cdn. Army, (O), No. 3 Coy. having been duly sworn, states:

"I am Corporal in charge of "F" Block and in charge of all the cleaning, including the cleaning of No. 3 Orderly Room. On Sunday, Apr. 27, 41, at 1715 hrs. Pte. Inglis came over and gave me a verbal order from C.S.M. Stone for three men to wash the Orderly Room floor and clean it up generally. I detailed Pte. Ouellette, whom I recognize, as one of the three men to go and clean up No. 3 Orderly Room and I told him it would take only 10 or 15 minutes. Pte. Ouellette said "I won't do it." and picked up his respirator and dashed out of the Emergency Door, slamming the door as he went out. I went to the Emergency Door, opened it and called, "Ouellette Ouellette." I could see him but he paid no attention. I then detailed another man for the job, Pte. Thomkinson.

When Pte. Ouellette returned to "F" Block at 2130 hrs the same day, I placed him under open arrest and reported same to No. 3 Coy. Orderly Room on Apr. 2 8, 41.

This is all I know about this case.

.....
(Bosher, J) A/Cpl.

Q. by Accused. "Do you remember if Pte. Inglis came over to me and asked me to do this detail before you gave me the order?"

A. by Witness. "No, Pte. Inglis did not go to you."

Q. by Accused. "When you were standing by your bed, did you not say to me that I would be washing floors for twenty minutes and wasn't Pte. Inglis in front of me?"

A. by Witness. "Yes, Pte. Inglis was right beside you."

3rd Witness. D-91328, C.S.M. Stone, W.A., No. 1 R.C.A.S.C. Holding Unit, Cdn. Army, (O), No. 3 Coy. having been duly sworn states:

"I am C.S.M. Stone of No. 3 Coy. No. 1 R.C.A.S.C. Holding Unit, Cdn. Army, (O). On Apr. 27, 41, I gave Pte. Inglis, the Coy. runner, an order to see A/Cpl. Bosher about fatigues for cleaning up No. 3 Coy. Orderly Room. It is customary for me to give the Coy. runner instructions of this type for cleaning the Orderly Room. It was reported to me on the morning of Apr. 28, 41, that Pte. Ouellette was placed under Open Arrest by A/Cpl. Bosher. I took the case for investigation and owing to the gravity of the charge I ordered him in Close Arrest. That is all I know about this case.

W.A. Stone
(W.A. Stone)C.S.M.

The accused declines to cross-examine this witness.

The accused is duly cautioned M.M.L. R.P. 4(e) and makes the following statement.

Statement by E-14377, Pte. Ouelette, G.R., No. 1 R.C.A.S.C. Holding Unit, Canadian Army, (O), No. 3 Coy.

The accused having been duly sworn states:

"On Sunday, Apr. 27, 41, I was standing by my bed and I heard Pte. Inglis tell Pte. Nolet that he was wanted to wash No. 3 Coy. Orderly Room, and which Pte. Nolet refused to do. Pte. Inglis then came over to me and said, "Ouellette, come with me to wash the floors." I refused as I was getting ready to go out and I also figured that one Private could not order another Private to do a job. Then Pte. Inglis left me and went and saw A/Cpl. Bosher, this was the second time Pte. Inglis had spoken to A/Cpl. Bosher. Then Pte. Inglis told A/Cpl Bosher that I had refused. It was then that A/Cpl. Bosher yelled to me "Ouellette, go and wash this floor." I said, "No. Corporal," I then picked up my respirator and walked out of the Emergency Door. After I went out of the door I heard A/Cpl. Bosher call to me. I paid no heed and went to the Canteen. On my return to barracks, A/Cpl. Bosher sent over a Private who told me that he wanted me. As I was in bed I said, "If the Corporal wants me, he knows where I am." "He can come and see me." The Private which had given me this message left and did not return to see A/Cpl. Bosher. After twenty minutes A/Cpl. Bosher came by my bed and warned me that I was under open arrest.

D.R. Ouellette

STATEMENT OF ACCUSED CONT'D.

"The reason I refused to wash the floor was as soon as I was told that it was washing floors I said, "I won't do it.", because when I get my feet or hands wet, both feet and hands go numb. This happens even when I wash my hands. I won't even take a chance having a bath due to the pain I get."

G R Ouellette
.....
(G.R.Ouellette)Pte.

I hereby certify that the foregoing summary of evidence consisting of three (3) pages was taken down by me in writing in the presence of the accused and rules of procedure 4 (c) (d) (e) and (f) have been complied with.

W D S Careless
.....
(W.D.S.Careless)Lieut.
Officer taking down Summary.

Bordon, Hants,
29 Apr. 41.

D C Cameron
Jno/W & Pres.

Certified true copy.

NE 14377. Name OUELLETTE, J.R. Sqn., Battery, or Company — Corps R.C.A.S.C. Holding Unit — Date of enlistment 9 April 40 — O.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 freedom from extra fine — Sheet No 1 — Signature O.C. Company, etc. — Character

Place	Date of 1940	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
									7 days.
Camp Borden, Ont:	23-6	Pte		Conduct to the prejudice of good order and military dicipline	E.14394. Poirer. A.	168 Hrs Det:	24.6.40	Maj: Savard	For: Pay
" " "	15-7	"		A. W. O. L. 21 Hrs	Cpl: Robin	Reprimand	16.7.40.	" "	for: Pay 1day
" " "	1-8	"		A. W. O. L. 6 days & 19½ Hrs	Cpl: Shaw	14 days Det:	8-8-40.	" "	Pay 21 "
" " "	26-8.	"		A. W. O. L. 12 " & 19 Hrs	Cpl: Robin	14 Days C.B.	9.9.40	" "	" 41 "
" " "	29-9.	"		A. W. O. L. 4 days & 16½ "	Sgt: Matthews	20 Days Det:	4-10-40	" "	" 25 "
On the 9th October, 1940, this soldier completed six months service, and in accordance with Routine orders 71 C.A.S.F. Overseas - the above Regtl: entries were transferred from previous sheet which was destroyed then - 10 - 10- 40.									
Toronto, Ont	12.12	Pte		A. W. O. L. 13 Hrs	2nd Lt: Houde	Adminished	18-3-41	Majr Savard	1 days P
" "	1.11.	Pte		A. W. O. L. 5 days 21 Hrs 30Mins	Cpl: Robin	7 days C.B. & 7 days Pay	7.11.40.	" "	6 days pay

(P.T.O.)

List of witness for the Prosecution inthe case of. E 14377 Pte.Ouellette G.R.

Pte Inglis J.D. M 41554 No.1 R.C.A.S.C.Holding Unit C.A.(O)
A/Cpl Bosher J. B-85834 No. 1R.C.A.S.C.Holding Unit C.A.(O)
C.S.M.Stone W.A. D-91328 No.1 R.C.A.S.C.Holding Unit C.A.(O)

For the defence none.

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.

NDRC

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 10th day of May 1941

W. B. Cashen Lieut

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

E 14377 Pte Ouellette GR of the No. 1 RCASC, Holding Unit C.A.O

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.

See Para. 664, K.R. 1935.

*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.

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 AWL.	6 times	6 times.
For Conduct to the prejudice	1 times	1 times.
For	times	times.
For	times	times.

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

or,

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

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

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. NDRC

Wt. 43849/964 50,000 2/40 W. S. Ltd. 51—6004

D. C. Cameron Lieut

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 none. days in Civil Custody,

and 12 days in Military Custody.

Total 12. days.

Of which none. days were spent in hospital.

5. The present age of the accused according to his record of service / attestation paper is 32 y 3 m.

6. The date of his commission / attestation specified in his record of service / attestation paper is April 9/40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is _____

8. The accused is entitled to deferred pay or gratuity in respect of _____ years' service.

9. The accused is entitled to reckon _____ 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 [*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.

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 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.

[illegible]

[illegible]

(Continued overleaf.)

4W-91

Pte Ouellette. L.

SCHEDULE.

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

Accused: E-35251 Pte Lawrence OUELLETTE R de Chaud 10 CHR 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	Guilty	Guilty	
2nd	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, and in loss of kit see RP 44 fn 6.)

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

(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 43 days, of which 21 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 fifteen (15) months.

(Sgd) ~~Judge Advocate, if any:~~ CGK Date awarded: 19 Feb 45 (Sgd) " C.G. King " 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:

CONFIRMED

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

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

(Sgd) " G S N Gostling " Brigadier

Date 20 Feb 45 Commanding 2 CDN BASE RPT GP Confirming Officer.

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

Accused.	Date.	Signature of Offr.
E-35251 Pte Lawrence OUELLETTE R de Chaud, 10 CHR Bn.	1700 hrs 22 Feb 45	" Jas W Varty " Lt Ass Adjt 10 CHR Bn.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

40-71

CPA56 (To Issue of APA81) 40/P & E/1008 (45/10)

FIELD GENERAL COURT-MARTIAL

4/38B

(Convened by Order of Brig. G S N Gostling ED Comd 2 CBRG dated 18 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.
E35251	Pte		Lawrence	OUELLETTE	R de Chaud 10 CHR Bn

CERTIFIED TRUE COPY

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 19 Feb 45 CGK

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 (✓) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and CGK each charge discloses an offence.(3) CGK

(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 CGK

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

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

(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 ...~~ CGK

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

~~The shorthand writer is sworn.(*)~~ CGK

(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	C. G. King	RCA 9 CHR Bn
Member	Major	E. V. Pinkham	RHC X-9 List 3 Cdn MRTD
Member	Lieut	N. H. Chate	CH of O 10 CHR Bn
~~Judge Advocate~~	CGK		
Prosecutor	Lieut	G. C. Scott	Ter Scots 10 CHR Bn
Defending Offr	Lieut	H. G. G. Forest	FMR 10 CHR 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 E35251 Pte Lawrence OUELLETTE before arraignment make(s) (no) (✓) plea CGK (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. CGK

(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 CGK

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 ......Yes......(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 ......the...... 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. CGH
(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) CGH
(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 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. CGK

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......
(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 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......(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(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.

CHARGE SHEET

The accused E35251 Pte Lawrence OUELLETTE (R de Chaud) on the strength of 43 Coy, 10 CBR Bn, a soldier of the Canadian Army Overseas,

is charged with

FIRST CHARGE WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE
AA Sec 15(1)

in that he

In the Field at 2200 hrs 12 Nov 44 absented himself without leave until surrendering himself to D61024 Sgt Corbeil R at 10 CBR Bn, at 0830 hrs 5 Jan 45.

Total absence: 53 days, 10 hours, 30 minutes.

SECOND CHARGE WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE
AA Sec 15 (1)

in that he

In the Field at 1400 hrs 3 Feb 45 whilst a patient under close arrest at 2 Cdn General Hospital absented himself without leave until returning to his ward at 1430 hrs 4 Feb 45.

Total absence: 1 day, 30 minutes.

" J Runcie "
(J Runcie) Lt Col
O.C., 10 C.B.R.Bn

In the Field
13 Feb 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

" G S N Gostling "
(G S N Gostling) Brigadier
Commander
2 Canadian Base Reinforcement Grou

In the Field
18 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) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 320, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E-35251	Pte		Lawrence	OUELLETTE	R de Chaud 10 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*) 18 Feb 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court Martial ". GSNG

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.~~ GSNG

(*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. GSNG

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.~~ GSNG

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

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

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

PRESIDENT.

(Rank.)	(Must be named. RP 106.)		(Unit.)
Major	C. G. King	RCA	9 CBR Bn

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)		(Unit.)
Major	E. V. Pinkham	RHC X-9 List	3 Cdn MED
Lieut	N. H. Chate	CH of O	10 CBR Bn

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.)

" G S N Gostling " (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 18 Feb 45

Commanding 2 CDN BASE RPT GP

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAB6 (To take the place of AFA3: 40/F & S/16/7 (4021)

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

MEDICAL OFFICERS CERTIFICATE

I certify that I have this day examined E35251 Pte OUELLETTE L, 10 CBR Bn, and in my opinion he is fit to undergo trial by Court Martial.

Field
19 Feb 45

" ????????????? " Capt
10 C.B.R.Bn.

STATEMENT OF ACCUSED

In the case of E35251 Pte Lawrence Ouellette (R de Chaud) of 43 Coy, on strength 10 CBR Bn, a soldier of the Cdn Army Overseas states:

When I was in 48 Coy I asked the Captain to put me on a draft which he refused to do. I was then transferred to 43 Coy while in this Coy I received a letter from home saying that my brother had his two legs off in Italy last August so I just got fed up and I left. That is all, sir:

PLEA IN MITIGATION OF PUNISHMENT

RE: Pte Lawrence Ouellette (Regt de Chaud).

Mr President, members of the Court.

Pte Ouellette has been in the army for a few years, he was in action with his unit for four months.

Pte Ouellette can still render good service to his country by rejoining his unit as soon as possible, he realizes his mistake, is willing to go back to action.

I hope the court will keep these facts in mind and deal lightly in giving the sentence.

I thank you

19 Feb 45.

" H. Forest " Lt.

CERTIFICATE UNDER ARMY ACT SECTION 163 (1) (1)

Certified that E35251 Pte OUELLETTE L of the Regt de Chaudiere surrendered to D61024 Sgt Corkil R of the Fus M R, Leopold Barracks at 0830 hrs on the 5 day of Jan 1945 as an absentee without leave. He was wearing military uniform at the time of his surrender.

Leopold Barracks
5 Jan 45.

" J. L. Blue " Major
A/O.C., 10 C.B.R.Bn.

SUMMARY OF EVIDENCE

In the case of E-35251 Pte Lawrence OUELLETTE (R de Chaud) on the strength of 43 Coy, 10 CBR Bn, a soldier of the Canadian Army Overseas.

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

FIRST WITNESS Lieut N/S Margaret SHEARMAN, Nursing Sister in charge of Detention Ward, 2 Cdn General Hospital, having been duly sworn, states:

I am Lieut N/S Margaret Shearman attached to 2 Cdn General Hospital When I called for the accused whom I recognize, for treatment at 1400 hrs 3 Feb 45 he could not be found, and the ward was searched for him. The accused was not present in his bed or the ward until he returned to the ward at 1430 hrs on 4 Feb 45, when I then saw him. He was listed on the absentee roll of the 4 Feb 45 as being absent.

R.P. 83 (b) complied with.

" Margaret Shearman " Lt N/S

(Margaret Shearman) Lieut N/S
2 Cdn General Hospital.

The accused declined to cross examine the witness.

DOCUMENTARY EVIDENCE

The Declaration of the Court of Inquiry, produced as documentary evidence, was read over to the accused, marked Exhibit "A", signed by me and attached hereto.

" R P Stewart " Lt

(R P Stewart) Lieut
Officer detailed to take
Summary of Evidence

The Certificate of Surrender under A.A. Sec 163 (1) (j) produced as documentary evidence was read over to the accused, marked Exhibit "B" signed by me and attached hereto.

" R P Stewart " Lt

(R P Stewart) Lieut
Officer detailed to take
Summary of Evidence

A certified true copy of the absentee report of 4 Feb 45 of 2 Cdn General Hospital, produced as documentary evidence, was read over to the accused, marked as Exhibit "C", signed by me and attached hereto.

" R P Stewart " Lt

(R P Stewart) Lieut
Officer detailed to take
Summary of Evidence.

The accused does not wish to call any witnesses for the defence.

The accused having been cautioned as follows: " Do you wish to make any statement or give any evidence on oath? You are not obliged to say anything or give any evidence unless you wish to do so, but what so ever you may say or any evidence you may give will be taken down in writing and may be used in evidence," declines to give and evidence and reserves his defence.

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

" R P Stewart " Lt

(R P Stewart) Lieut
Officer detailed to take
Summary of Evidence.

In the Field
10 Feb 45.

LIST OF WITNESSES

FOR THE PROSECUTION

Lieut N/S Margaret Shearman · 2 Cdn Gen Hospital

FOR THE DEFENCE

NIL

LIST OF EXHIBITS

Exhibit "A" - Declaration of the Court of Inquiry
Exhibit "B" - Certificate of Apprehension under 163 (1) (j)
Exhibit "C" - Certified True copy of "Absentee Report".

I CERTIFY THAT I HAVE RECEIVED FREE OF CHARGE, A COPY OF THE SUMMARY OF EVIDENCE, THE CHARGE SHEET, THE LIST OF WITNESSES, AND A LIST OF EXHIBITS.

I DO DESIRE THE SERVICES OF AN OFFICER TO REPRESENT ME AT MY TRIAL BY COURT MARTIAL.

" L Ouellette "

E35251 Pte OUELLETTE L.

---

13 Feb 45

E35251 Pte OUELLETTE L

1. I hereby acknowleige receipt of one copy of CHARGE SHEET and one copy of the SUMMARY OF EVIDENCE, delivered to me 16 Feb 45.

2. I request that an officer be appointed as my Defending Officer at my trial by Court Martial.

(SGD) " L OUELLETTE "

(E35251 Pte OUELLETTE L)

I hereby certify that Lt H.G.G. Forest was appointed to defend E35251 PTE OUELLETTE L at his forthcoming trial by Court Martial and that the said OFFICER was notified that he was Defending Officer on 16 Feb 45.

" Jas W Varty " Lt

Ass Adjutant
10 Cdn Base Rft Bn

RECORD of the Declaration of a Court of Inquiry assembled at the Field on the 7th day of December 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. E35251 Pte OUELLETTE L

DECLARATION

The Court declare that No. E35251 Pte OUELLETTE L X-4 L.st, 10 Cdn Base Rft Bn illegally absented himself without leave from 2200 hrs 12 Nov 44 at the Field on the 12th day of November 44, that he is still so absent, and that on the 7 December 1944 he was deficient, and that he is still deficient of the following articles:—

ARTICLES	VALUE	ARTICLES	VALUE
SEE ATTACHED LIST			

Capt J.E. Parker (CH of O) President

Lieut J.H.E. CARON (CIC) Member

Lieut Y. COURTEMANCHE (CIC) Member

Signed at the Field

this 7th day of Dec 19 44

Signature of Commanding Officer Lt Col F. M. Mitchell

Certified true copy " C M G Arthurs " (C M G Arthurs) Capt Adjt, 10 C.B.R.Bn. Signature of Officer having custody of original record

M.F.B. 275
A.F.B. 112
ISM—6-42 (750)
H.Q. 1172-39-267

KIT DEFICIENCIES IN THE CASE OF

E35251 PTE OUELLETTE L 10 C.B.R.Bn.

ARTICLE	QUANTITY	VOC VAL 100%	DEPREC VAL 75%
Anklets Web	1	.99	.74
Boots Ankle	1	5.46	4.10
Blouses Battle Dress	1	5.25	3.94
Berets F.S.	1	.56	.42
Drawers Cellular Pr	2	.86	.64
Greatcoat Drab	1	11.55	8.66
Jackets, Sweater	1	1.79	1.34
Socks, Woolen Prs	3	1.11	.84
Shirts, Angola	2	4.06	3.04
Trousers, Battle Dress	1	5.39	4.04
Braces, pr	1	.28	.21
Brushes, Hair	1	.34	.26
Brushes, Shaving	1	.37	.28
Brushes, Shoe	1	.28	.21
Brushes, Tooth	1	.11	.08
Caps, Comforter	1	.34	.26
Combs, Hair	1	.04	.03
Dressings First Field	1	.01	.01
Forks M/S Table	1	.07	.05
Holdall	1	.19	.14
Housewife	1	.17	.13
Knife Clasp	1	.86	.65
Knife M/S Table	1	.15	.11
Razors Safety Sets	1	.06	.05
Spoon M/S Dessert	1	.07	.05
Towels Hand	2	.64	.48
Belt Waist Fb	1	.74	.56
Bottle Water	1	.82	.62
Braces Web L & R	2	.60	.46
Carriers Water Bottle	1	.37	.28
Frogs Web Bayonet	1	.19	.14
Haversack Web	1	1.79	1.34
Helmets Steel	1	1.50	1.13
H.S.Camouflage	1	.15	.11
Packs Large	1	1.84	1.38
Pouches Basic	2	2.38	1.78
Straps Shoulder Haversack L&R	2	.64	.48
Straps Web Supporting	2	.64	.48
Tins Mess Sets	1	.35	.26
Capes A/C	1	2.76	2.07
Respirator Complete	1	4.04	3.03
Ointment A/G Tins	2	.30	.22
Eyeshields A/G Prs	1	.45	.34
Blankets Brown Single	1	3.07	2.20
Mugs Drinking	1	.13	.10
Sheets Ground	1	2.94	2.21
Rifle Lee Enfield No 4 Mk 1	1	45.48	34.11
Bayonet, Rifle	1	2.46	1.85
Scabbards, Bayonet, Rifle	1	.61	.46
Bottles, Oil	1	.06	.05
Pullthrough, Single	1	.01	.01
Detectors Sleeve	2	.12	.10
Boots Ankle	1	5.46	4.10
TOTAL: -		$ 122.90	$92.17

CERTIFIED THAT ON THE 7th DAY OF DEC 1945 E35251 PTE OUELLETTE WAS DEFICIENT THE A/M ARTICLES.

(SIGNED) " E M LAROSE "

C.Q.M.S., Coy

ABSENTEE REPORT

#2 CDN GENERAL HOSPITAL — FEBRUARY 4th 1945

REGT NO	RANK AND NAME	WHEN ABSENT	HOUR OF RETURN	IN WHAT STATE	REMARKS
A26135	Pte Dommingburg	0600 hrs Jan 13 45	22 days AWL		Patient (SAS)
L13392	Pte Woroniuk	1700 hrs " 14 45			" "
H99132	Pte Toniff	1700 hrs " 16 45			" "
C1685	Spr McNaughton	1700 hrs " 18 45			" "
H50603	Pte McGrath	2200 hrs " 21 45			" "
G21386	Pte Shonwine	2359 hrs " 29 45			" "
F58068	Pte Smith	1930 hrs " 29 45	2359 at Provost H.Q. Feb 2nd 45		"
L27963	Pte Umperville	1930 hrs " 29 45	2359 at Provost HQ. Feb 2nd 45		"
H25141	Pte Evertte	1400 hrs Feb 2 45	2015 Feb 4th 45		" (Casul)
E35251	Pte Ouellette	1400 hrs Feb 3 45	1430 Feb 4th 45		" "
M1231	Pte Andrews	2145 hrs " 3 45			" "
M50305	Pte Perrot	1945 hrs " 4 45			" "

" Q M S Euston " Orderly Sergeant

I hereby certify that this a True copy of the Absentee Report for #2 Gen Hospital dated Feb 4th 1945.

SIGNED " Q M S Euston "

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).
E-35251	Pte	OUELLETTE L	10 CBR Bn

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 ORIGINAL SHEET NOT AVAILABLE

For _____ times.

For _____ times.

For _____ times.

Date of first entry in Field Conduct Sheet _____ times.

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~~ _____ ~~days at~~

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 43 days in military custody, *i.e.*, _____ days in open arrest, _____ days in close arrest; of which 21 days were spent in hospital.

5. The present age of the accused is 22 yrs 5 mons 26 days

6. The date of his attestation is 21 Apr 41

7. The service which the accused is allowed to reckon is 3 yrs 9 mos 23 days

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

8. The accused is in possession of‡ CVSM & Clasp

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

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.*

(*28072) Wt.30721/3701 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.
		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 19th day of February 1945

" C M G Arthurs " Capt

TOS 10 CBR Bn wef 5 Jan 45

No. E35251 Name OUELLETTE L | Sqn, Battery, or Company | Corps CIC | Date of enlistment 21-4-41 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/F&S/136 C

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 GC 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 ONLY					
				CERTIFIED TRUE COPY OF REGIMENTAL BOOKS IN MY POSSESSION					
				" C M G Arthurs " Capt Officer in charge of Regimental Books					

(PTO)

C.A.O.F. - 1 - 59

Pte. Ouellet, L.C.

Missing

4W-22

Pte. Ouellet L.C.

SCHEDULE.

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

Accused: B-101521 Pte Louis Clement Ouellet R de Chaud 10 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	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 ~~present~~ 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 79 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 one year

(Sgd) Judge-Advocate, if any. 15 Feb 45 Date awarded. (Sgd) G G MacKenzie 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 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:

Confirmed

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

Date 17 Feb 45 (Sgd) G S N Costling (G S N Costling) Brig Commanding 2 Cdn Base Rft Cp Confirming Officer.

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

Accused.	Date.	Signature of Offr.
B-101521 Pte Louis Clement Ouellet R de Chaud 10 CBR Bn	1330 hrs 20 Feb 45 on 10 CBR Bn Parade	Jas W Varty Lt ass Adjt 10 CBR Bn

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

4 Wr 22

FIELD GENERAL COURT-MARTIAL

CF A96 (To form part of AFA31) 40/P & B/1000 (A6760) 4/39B

Convened by Order of Brig G S N Costling MD Comd 2 CBRG dated 13 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) 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-101521	Pte	CERTIFIED TRUE COPY	Louis Clement	Ouellet	R de Chaud 10 CBR Bn

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 15 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 23/101

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 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.(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 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 C-6622 Sgt Cantin RR interpreter? Ans No

The Interpreter is sworn.(1) Do you object to [illegible] 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 G MacKenzie MBE	FGH X-9 List att 5 Cdn AGRD
Member	Capt	C Laprasse	CIC 10 CBR Bn
Member	Lieut	D E Peat	1 Cdn Para Bn 11 CBRBn
Judge-Advocate	~~Lieut~~	~~[illegible]~~	~~[illegible]~~
Prosecutor	Lieut	A T Mann	CIC 11 CBR Bn
Defending Offr	Lieut	H G G Forest	CIC 10 CBR Bn

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 DI p 33.)

A8. The accused B-101521 Pte Ouellet L C 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 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 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.

2 CBRO Vol III P 121

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 pleas 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 ..... (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 44, 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 .....
(*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) (if any), 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.(2)
(*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, 757-758. 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(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 dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused H-101521 Pte OUELLET Louis Clement (R de Chaud) on the strength of 43 Coy 10 CBR Bn a soldier of the Canadian Army Overseas

is charged with

First Charge
AA Sec 15(1) WHEN ON ACTIVE SERVICE ABSENTING HIMSELD WITHOUT LEAVE

in that he

In the Field absented himsedl without leave from 1000 hrs 24 Oct 44 until apprehended at 2030 hrs 27 Nov 44.

Total absence 34 days 4 hrs 30 mins.

In the Field
30 Jan 45

J Runcie Lt Col
CO 10 CBR Bn

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
13 Feb 45

G S N Gostling Brig
Comd
2 Cdn Base Rft 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.
E-101521	Pte		Louis Clement	Ouellet	R de Chaud 2x10 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) 13 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.)
Major	G G MacKenzie MBE	FGH X-9 List att 3 Cdn NETD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	C Lagasse	CIC 10 CBR Bn
Lieut	D M BEAT	1 Cdn Para Bn 11 CBR Bn

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.) G S N Bostling (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 13 Feb 45 Commanding 2 Cdn Base Rft Gp Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

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

MEDICAL OFFICERS CERTIFICATE

I certify that I have this day examined B-101521 Pte Ouellet L C

10 CBR Bn and in my opinion he is fit to undergo trial by

Court Martial.

Station Field
Date 15 Feb 45

???????? Capt
10 CBR Bn

STATEMENT BY ACCUSED

The statement that I will make at this moment is true. I have beenxxv evacuated three times fro, the firing line beaause of shell shock and a wound to the right foot and the head. I was evacuated to the 12 C H in Nrv,gre after spending a month I was then put on draft again for 2 CBRC. The 24 Oct 44 I went to the M O I did not feelwell that day, I was bery discouraged with the life being alone of my family from my father and mothe . When they we re writes me it made me very lonely. I don't feel able to go back to the firing line. Every time I weny to see the M O he always said that I was alright but never examined me. He asked for a rebored and ever since I've been in the army I nerer passed another board. Since I've been in the army the firing does not interest me . If they knew they'd look of the cade like it should have been looked at. I would be interested because when I joined the army it was for the purpose of my mother getting cured. It was a promise that I had made. Iget there and if I did not value enough after being wounded evacusted 3 times. I'd rather be killed here. That is all I have to say

L C Ouellet

PLEA IN MITIGATION OF PUNISHMENT

RE: L CL Ouellete R De Chaud

Mr President members of the court.
Pte Ouellet has had quite a long c areer in the army he had been in action with his unit andgave good servicee, he was evacuated amd though he did not have enough rest on the refusal from theM O and still under the influence of the shell shock he left the Barracks.
I ask the court to be lenient in giving the sentence as I have no more to sayafter his declaration

I Thank you

H Forest Lt

SUMMARY OF EVIDENCE

In the case of R-101521 Pte Louis Clement Ouellet on the strength of 43 Coy 10 CBR Bn a soldier of the Canadian Army Overseas.

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

Documentary Evidence

The Record of the Declaration of a Court of Inquiry produced as documentary evidence was read over to the accused , marked Exhibit "A" aigned by me and attached hereyo.

J W Varty Lt
Lorne Scots 10 CBR Bn
Officer detailed to take
Sumanary Of Evidence

The Part II Order submitted as documentary evidenc was read over to the accused marded Exhibit "B" signed by me me and a tached hereto.

J W Varty Lt
Lorne Scot 10 CBR Bn
Officer detailed to take
Summary of Evidence

The accused having been cautioned as follows, "Do you wish to make a statement or give any evidence on oath? You are not obliged to say anything or to give any evidence unless you wish to do so; but whatever you may say or any evidence you may give will be taken down in writing and may be used as evidence" declines to give any evidence and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one (1) page was taken down by me in writing in the presence and hearing of the accused.

I certify that Rules of Procedure 4 (c)(e)(D) and (f) complied with.

J W Varty Lt
Lorne Scot 10 CBR Bn
Officer taking the
Summary of Evidence

RECORD of the Declaration of a Court of Inquiry assembled at the field on the 21 day of November 1944, 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. E-101521 Pte Ouellet L C

DECLARATION

The Court declare that No. E-101521 Pte Ouellet L C X-4 List (Rde Chaud) 10 Cdn Base Rft Gp illegally absented himself without leave from 1000 hrs 24 Oct 44 at the field on the 24 day of Oct 44, that he is still so absent, and that on the 21 November 1944 he was deficient, and that he is still deficient of the following articles:—

ARTICLES		VALUE		ARTICLES	VALUE
Battle dress Blouse	1	5	25		
" " Trousers	1	5	39		
Socks wollen	2		74		
Braces	1		28		
Anklets web	1		99		
Boots ankle	2	10	92		
Shirts angola	1	2	03		
Caps F S	1		56		
Drawers Cellular	1		43		
Combs hair	1		04		
Knife clasp	1		86		
Total Value		27	49		

Major T M Powers President

Lieut N J Turnbull Member

Signed at the field Member

this 21 day of Nov 1944

Signature of Commanding Officer F M Mitchell Lt Col

Certified true copy C M G Arthurs Capt Signature of Officer having custody of original record

M.F.B. 375
A.F.B. 115
25M—6-41 (730)
H.Q. 1772-58-257

(f) TOS X-4 List (10Bn) on app from des wef 2030 hrs 27 Nov 44
B-101521 Pte Ouellet L C

LIST OF WITNESSES
FOR THE PROSECUTION

NIL

FOR THE DEFENCE

NIL

LIST OF EXHIBITS

Exhibit "A" Declatation of a Court of Inquiey.

Exhibit "B" Part II Order (X List Le Regiment de la chaudiere)
No 94 D-30 Dec 44.

I CERTIFY THAT I HAVE RECEIVED FREE OF CHARGE A COPY OF THE CHARGE SHEET THE SUMMARY OF EVIDENCE THE LIST OF WITNESSES AND A LIST OF EXHIBITS.

I DO DESIRE THE SERVICES OF AN OFFICER TO REPRESENT ME AT MY TRIAL BY COURT MARTIAL.

L C Ouellet
(L C Ouellet) Pte B-101521

STATEMENT AS TO CONDUCT AND TERMINATION 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-101521	Pte	QUELLET, L.C.	10 CBR Bn

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 ..... Temporary Sheet..... ..... 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 .....

beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 72.. days in military custody, making a total of ..72.. days of which Nil.. days were spent in hosp.

5. The present age of the accused is 19 yrs. 11 mos. 9 days.

6. The date of his attestation is 18 Aug. 41.....

7. The service which the accused is allowed to reckon is 3 yrs. 5 mos. 12 days. C.V.S.M. & Cla

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	.....

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.

Army Form B.296 (War)

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 15th day of Feb. 45

(CMG Arthur) Lieut
OIC Regimental Books.

No. Z101821 Name Ouellet L C | Sqn, Battery, or Company | T O S 27 Nov 44 Corps C I C | Date of enlistment 18 Aug 4[illegible] | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAS/136/2412

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 | 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					
				CERTIFIED TRUE COPY					
				???????????? Lieut					
				Officer i/c Regimental vooks					

(PTO)

W-102

Pte OUELLETTE, L.A

W-102 "A"

Army Form A.3.

Correspondence to be PINNED here.

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 January, 1943.

Whereas it appears to me, the undersigned, an officer in Command of R.C.A.S.C. 1 Canadian Corps, 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 hereunder named.

*[illegible]

* Omit if not applicable.

JUDGE ADVOCATE

CAPT. W. B. BATE ADJA 1 CDN CORPS.

President.

Rank.	Name.	Regiment.
Major	G. Gibb	51 Cdn Gen Tpt Coy RCASC

Members.

Rank.	Name.	Regiment.
Captain	L. H. Armstrong.	C.T.Amn Coy RCASC
Lieutenant	S. M. Adams.	C.T.Sup 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 (M.V.McQueen) Colonel
Commanding R.C.A.S.C. 1 Canadian Corps
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-123401 Private Louis Arthur OUELLETTE 85 Canadian Bridge Company R.C.A.S.C.	FIRST CHARGE Sec 9(2) A.A.	Not Guilty	Not Guilty 19 Jan. 43 [signature] W. B. Bate Capt Judge Advocate	

* 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*) [signature] (M.V.McQueen) Colonel
Commanding R.C.A.S.C. 1 Canadian Corps
Convening Officer (e)

(*Signed*) [signature] Major
President.

W. B. Bate Capt
Judge Advocate

(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 19th day of January 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)~~ The Judge Advocate
were duly sworn.

* Omit if not applicable.

Signed this 19th day of January 1943.

W. B. Bate Capt.
Judge Advocate

[signature]
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 day of 19

Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) (Signed)

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.

(11758) Wt. 40113—893 200 m 1/40 P. St. G. Inc.

B2.

CHARGE SHEET

The accused D-123401 Pte. Louis, Arthur, OUELLETTE, No. 85 Cdn. Bridge Coy. RCASC, is charged with, when on active service(Overseas)

CHARGE
ARMY ACT
Sec. 9(2)

DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

in that he

in the field, at about 2200 hrs. 15 Jan. 43, did not walk on the right hand side of the road when ordered to do so by Capt. R.H.G. Cunningham, Cdn. Dental Corps.

Alex. Gagnon
Alex. Gagnon Major
O.C. 85 Cdn. Bridge Coy. R.C.A.S.C.

Field
16 Jan. 43

To be tried by Field General Court Martial.

(M.V.McQueen) Colonel
DDST
1 Cdn Corps

Field
18 Jan 43.

"X" "X"

NO. 85 CDN. BRIDGE COY. R.C.A.S.C.
CANADIAN ARMY OVERSEAS

MEDICAL CERTIFICATE

The present is to certify that I have this date examined D-123401 Pte. Ouellette, L. A. of 85 Cdn Bridge Coy R.C.A.S.C. and find him to be ~~unfit~~ fit to undergo trial by F.G.C.M.

Medical Officer

Unit No. 1 Can. Gen. Hosp.

W. R. Scott Capt.
Judge Advocate.

Field
Date: 19 Jan 1943
/D.

A

Army Form A 9.

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

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

Proceedings of a ~~Field General~~ Court-Martial held ~~at~~ in the field on the 19th day of January 1943 by order of

Col. M. V. McQueen

Commanding R.C.A.S.C. 1 Cdn Corps

dated the 18th day of January 1943

President.

Major G. Gibb
61 Cdn Gen Tpt. Coy RCASC

Members.

Capt. L. H. Armstrong
1 Cdn Corps Tps Amn Coy RCASC

Lieut. S. M. Adams
1 Cdn Corps Tps Supp Coy RCASC

Capt. W. B. Bate AOSA 1 Cdn Corps, Judge Advocate.

Trial of* D. 123401 Ste Louis Arthur Ouellette 85 Cdn Bridge Coy RCASC.

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 the exigencies of the service, Lieut S. M. Adams may legally sit as a member although he has held his commission only since 6 June 42. R.P. 106(c) fn. S. ~~waiting member takes his place as a member of the Court.~~

W. B. B. J

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

The accused is brought before the Court.

Prosecutor,† Lieut. H. C. Hawes 85 Cdn Bridge Coy RCASC

~~Counsel‡ or~~ defending officer† Lieut T. McGrail 85 Cdn Bridge Coy RCASC.

W.B.B.

At 1115 ~~o'clock~~ hrs. the Trial commences.

The order convening the Court is read, and is marked A 1. 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.

Q1361 Wt.W4302/0967 40,000 cts. 2/40 K & H, Ltd. G622/11. Form A 9/20.

B

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

WHL. ~~The following officers under instruction are duly sworn.~~

Charge-Sheet.

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

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

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 ?

not guilty.

Question to the accused.

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

Answer.

Question.

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

Answer.

Question.

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

Answer.

Question

WHL ~~The accused having pleaded to which there is a plea of "Not Guilty," the provisions of Rule of a plea of "Guilty," until after the finding on~~ ~~complied with.~~ ~~charge, the~~

Instruction.

B

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

~~The following officers under instruction are duly sworn.~~

Charge-Sheet.

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

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

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.

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 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.

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 sir.~~

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. Capt. H. R. Brown, Edn. Dental Corps, attached No. 1. C.E.R.U.,

being duly sworn, is examined by the prosecutor.

I recognise the accused. At about 2200 hrs 15 Jan '18 I was bicycling along Neville Rd. In my unit. I was with Capt. Cunningham and about 15 feet ahead of him. I saw two men walking along well on the left hand side of the road. As I went by them I swerved to avoid them. Having passed them I heard Capt. Cunningham say "Get over on your right side of the road". I heard loud jeering remarks from the two men. I stopped and went back. The two men were the accused and Pte. Price. They were conversing with Capt. Cunningham. Their attitude was threatening. After awhile we rode off to No 1. C.E.R.U. I noticed that the accused continued to walk along the middle of the road and not along the right side of the road. We walked inside the main gate of No 1. C.E.R.U. The accused came along with Pte. Price. Capt. Cunningham ordered the accused to be placed under close arrest. Capt. Cunningham repeated his order to the accused to walk on the right hand side of the road. This order was given when Capt. Cunningham had stopped and got off his bicycle and was talking to the accused and Pte. Price. In my opinion the accused was under the influence of liquor but not drunk. I noticed this when he was in the Orderly Room. He was noisy and his face was flushed. He was noisy when we stopped on the road.

HRB

The accused recognised Capt. Cunningham as an officer when the order was given. It was a bright moon light night. Visibility was good. Capt. Cunningham had on his greatcoat. Pte. Price said "Just because you are an officer you can't order us around like dogs." The accused was present and heard this conversation. They were both close to Capt. Cunningham.

Cross examined: There were trees on both sides of the road but no great shadows were cast. Capt. Cunningham was talking to them both. He gave the order to them both. I glanced back as we left and I noticed the accused was not walking on the right hand side of the road. My bicycle lights were on.

Re-examined: We were inside the gate at No 1. C.E.R.U. and I could not see where they were walking as they came into camp.
R.P. 83(B) complied with.
The Court adjourns at 1155 hrs.
The Court re-opens at 1315 hrs.

Second Witness for the Prosecution } Capt. R.H.G. Cunningham Edn. Dental Corps attached No 1. C.E.R.U.

Being duly sworn is examined by the Prosecutor

I recognise the accused. On 15 Jan 43 at about 2200 hrs Capt. Brown and I were bicycling on the road from Cove to No 1. C.E.R.U. About 100 yds past a cross road we came upon two soldiers walking along the left side of the road in the direction in which we were going. Capt Brown was ahead of me. The soldiers appeared to swerve towards ~~come over to~~ the centre of the road as Capt. Brown came up with them. I shouted to them to get over to the right side of the road. They were in the centre of the road as I passed; one of them swung at me with his fist. I do not know which one. I then stopped and asked them if they wanted to be put under arrest. They approached. I talked mostly to the other soldier Pte. Price. The accused was present. He stood by my right side, somewhat to my rear. He did not get over to the right side of the road. I again ordered both men to get over to the right side of the road. Neither the accused nor Pte. Price did so. We proceeded on our way in about five minutes. We could hear them laughing as we went on. We went on to No 1. C.E.R.U. and waited for them at the gate. When they came I ordered the piquet to place the accused under arrest. I could not say the accused was

intoxicated. The accused recognised me as an Officer.

Cross examined: It was a bright moonlit night - Cloudless. There were some shadows on the road caused by trees on the sides of the road. I was wearing a greatcoat with my rank badges on it. ~~The lights were on~~ My bicycle lights were on. The road was straight. The road was an average width road for this country. A broken white line was down the centre of the road. It was plainly visible even without the bicycle lights. Four or five minutes elapsed after I had given the order to the accused the second time, during which time I was in conversation mostly with Pte. Price.

Re-examined: The accused heard me give the order ~~the~~ was two or five feet away from me.

By the Court: The accused did not obey my order to go to the right side of the road.

By the Judge Advocate: After I had stopped I said to the accused "Get over to the right side of the road." I was annoyed but I used no profanity. At the entrance to No 1 C.E.R.U. there is a sign which reads that soldiers will invariably walk on the right side of the road. After leaving them I noticed out of the corner of my eye that the accused was still in the centre of the road. When the accused turned off the road to the house leading up to No 1 CERU. I did not see which side of the road he was on.

R.P. 83 (R) concluded with.

D

The prosecution is closed.

Defence.

R.P. 40(A) complied with.

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. Yes sir

Question. Is he a witness as to character only? *Answer.* No.

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?

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.]

Instruction.

† 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*.)

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.

First Witness for the Defence } D. 123401 Pte. Ouellette L. A., the accused.

Leading Derby records is examined by the Defending Officer.

Around 10 o'clock on the night of 15 Jan 43 Pte Price and I were coming back from Rome on the road to camp. A station waggon stopped by us. The driver asked for some information. We were on the right side of the road. After the car left Pte Price was on the right hand side of the road and Pte Price was in the middle of the road. A bicycle came along & I was nearby near him by it I didn't see any lights. Another bicycle followed it. One of the riders said "Get the hell off the road." The last rider stopped about ten feet from Pte Price. Pte Price went up and talked to him. I was on the right side of the road. I went over to Capt. Cunningham and Pte Price who were in the middle of the road. Capt. Cunningham said "Do you want to be put under arrest. He then said "Walk on your own side of the road." He said that he was a captain. He stayed there about five minutes arguing with Pte. Price and then he went away. Capt. Brown was about four or five feet from us at this time. They then went away bearing us in the middle of the road. We then went on walking on the right side of the road. and continued walking on the right side of the road until we reached HQ 1 CERU. There we were placed under close arrest.

Cross examined: It was about half a minute after the station waggon left, that the bicycles came along. When the first bicycle came along it nearly ran into Pte. Price down. We jumped to the left side of the road. We were walking in the same direction as the bicycles were going. After I recognized Capt. Cunningham as an officer I did not go over to the right side of the road at once. I stood there a short while when Capt. Cunningham was talking to Pte. Price.

Re-examination: There was no warning sound from either of the bicycles as they approached us. We continued to walk on the right hand side of the road after Capt. Brown and Capt. Cunningham left us. I had been drinking but I wasn't drunk.

By the Court: The station waggon was coming towards us. It was a few minutes after Capt. Cunningham had left that I went over to the right side of the road. I just stood there waiting for Pte. Price.

By the Judge Advocate: The order given by Capt. Cunningham had something to do with "the right side of the road" but I am not sure of his exact words. I was drinking gin and beer that night.

R.P. 83 (B) complied with.

Second Witness for the Defence } B. 84904. Pte. Price, G.H. 85 Cdn Bridge Coy, RCASC.

Being duly sworn is examined by the Defending Officer:

At about 2200 hrs on 15 Jan 43 Pte Ouellette and I were returning from a pub near camp. We were proceeding on the right hand side of the road, a station waggon coming towards us, stopped. The driver asked for directions. In order that he could hear me he asked me around to the right hand side of the vehicle. I gave him his directions and was left standing in the centre of the road as he drove off. When I went to return to Pte Ouellette I was almost knocked down by two bicycles. Neither bicycle carried any lights. I was told in an officious manner to get the hell off the road. An argument occurred then. Pte Ouellette came from the right hand side of the road and joined us in the centre of the road. After the argument was over and the two other parties involved rode away Pte Ouellette and I returned to the right hand side of the road. On entering the gate of No 1. C.E.R.U. we were placed in close arrest.

Cross-examined: The two bicycles were not 20 feet apart when they passed me. They were close together. The argument was in the centre of the road. I didn't notice any lights on the bicycles. When the officer stopped he did not give an order to get over to the other side of the road. The only time he said so was when he nearly knocked me down.

Re-examined: There was no sound or warning from the bicyclists as they approached. It was a rather dark night. There was a moon but that part of the road was in shadow. I found it difficult to recognise Capt. Cunningham as an officer. Capt. Cunningham's order was given more or less to me because I was standing in the centre of the road. I don't believe Ouellette had received an order. Both Pte Ouellette and I had been drinking. We had spent the better part of the evg in the pub. The accused was able to walk but I am not able to say how well.

By the Judge Advocate: Capt. Cunningham did not order the accused ~~to~~ & me to go to the right side of the road but merely warned us we should walk on that side of the road.

R.P. 83(B) complied with.

Third Witness for the Defence } K89317 Cpl. Abel, D.C., 85 Bridge Coy RCASC.

being duly sworn is examined by the Defending Officer.

I recognise the accused. He is a steady soldier, does his work well & I have had no trouble with him whatsoever. Any job to which he has been detailed to do he has carried out to the best of his ability.

Cross examined: I have been with the unit since 10 Dec. 42. but my actual contacts with the accused have been about two weeks at the most.

No re-examination.

RP. 83(B) complied with.

The Defending Officer, addressing the Court, reviewed the evidence, stressing that the accused was not entirely sober: that no warning was given by the cyclists: that the order given by Capt. Cunningham was intended for Pte. Price and not for the accused.

The Prosecutor, in reply, reviewed the evidence stressing that the evidence of Capt. Brown and Capt Cunningham should be believed in preference to that of the accused and the witness Pte Price.

The Court and Judge Advocate do not consider a summing up by the Judge Advocate to be necessary.

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 not guilty of the charge.

Proceedings on Conviction *before Sentence.*

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

Evidence of character, &c.

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

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.*

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.

R. R. Bate Capt.
Judge Advocate.

Summary of Evidence in the case of D123401 Pte Ouellette, L.A. #85 Cdn Bridge Coy, R.C.A.S.C., a soldier of the Canadian Army. (overseas)

Evidence taken on oath by order of Major Alex Gagnon, Commanding officer, No 85 Cdn Bridge Coy R.C.A.S.C.

First Witness: Capt. H.R. Brown, Cdn Dental Corps after having been duly sworn states:-

On Friday, January 15th at approx 2200 hours Capt Cunningham and I were each riding our bicycles back to #1 C.E.R.V. We were proceeding along Hinley Road and as I rode past two soldiers walking on left hand side of road. I had to swerve to avoid being hit by Pte Price. Pte Ouellette was also with Pte Price. I rode on a short distance and returned when I heard Capt Cunningham ordering them both to walk on the right side of road. ~~Both~~ Ouellette ignored the order and after we left them they both continued walking in center of road both laughing loudly.

H. R. Brown Capt.,
C.D.C., #1 C.E.R.V.

The accused declines to cross examine this witness.

Second Wren:- Capt. R.H.G. Cunningham, Cdn Dental Corps, after having been duly sworn, states.

On the night of Friday, January 15th, 1943 at approximately 2200 hours, Capt Brown and I were bicycling on the road from cove to #1 CERU, shortly after passing the grey stone church on the road, we came ~~aw~~ upon two soldiers walking in the same direction and on the same side of the road well towards the center. After noticing that Capt Brown almost collided with the two soldiers I ~~gave~~ shouted to them to get on the right hand side of road. I stopped but they instead of obeying the order approached and Pte Price began to argue while Pte Ouellette who also approached stood back but did not obey order, knowing well that I was an officer.

R.H.G. Cunningham Capt
Cdn Dental Corps.

The accused declines to cross examine this witness.

Question to accused: - Do you wish to call any witnesses to give evidence on your behalf.

Answer. - No sir.

A- The accused, after being duly cautioned in accordance with R.P. 4(E) declines to make any statement, reserving his defence.

B- Certified that Rules of Procedure 4(C)(D)(E) and (F) have been complied with.

C- Taken down by me in the presence of and hearing of the accused, at Guilmont Barracks, Cove, Hants, this 16th day of January 1943.

J J Higgins Lt

(officer detailed to prepare summary)
#85 Cdn Bridge Coy RCASC
Canadian Army, (Overseas)

GGG 50 (Case #2)

SPR OUELLETTE L.J.

See A-69 for hit case

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 AA 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.)

~~Al~~ present under sentence for ~~to-commence-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 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 detention for a period of Ninety (90) days.

17 Mar/44 [signature] President (RP 45, 50.)
(Sgd) 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 :

I Confirm

~~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) [signature] Brigadier
Date 20 Mar 44 Commanding "F" Comp., C.R.V. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKED. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
G 21084 Spr Ouellette L.V.	21 Mar 44	[signature] ADJT.

FIG. 6 CDN. CONSTR. COY. R.C.E.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

ENTERED IN RECORDS OF C.M. 666-50

CFAMS (TD) (Dept of AFAIR) 4C-P & E-1000 (3964)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig. G.S.N. Gostling Comd "F" Group, C.R.V. Dated 16 Mar 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/oppmt, 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.
G-21084	Spr	Lucien Joseph	OUELLETTE	6 C.C.C., R.C.E.

PROCEEDINGS REVIEWED
C. Dutch Lieut
Rec'd
31 Mar 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the ~~NW~~ in (country) England on (date(s)) 17 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, 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 0920 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(F), 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	Lt.-Col.	D.L. Redman, V.D	M.D. C.R.V.
Member	Capt	D.N. McJohnston	1 C.Sqn R.C.E.
Member	Lieut.	D.A. Kinchart	1 Cavalry Bde Sig Sqn
~~Judge Advocate~~			
Prosecutor	Lieut	C.M. Stanbury	6 C.C.C. R.C.E.
Defending Offr	Lieut	D.C. Powell	6 C.C.C. R.C.E.

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 ~~(no)~~ ~~plea~~ 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 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 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 37(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), 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.(1)
(*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(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)
(*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 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 to be 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)
(*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)
(*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. .....
Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(*I. RP115. 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 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)
(*I. AA 54(3) (6), RP 45. 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
(*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 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) soldiers having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*I. AFB 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 Counsel - NOTE AIT (2)
(*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 90(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, 89, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2322, 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, G.21084 Spr. Lucien Joseph OUELLETTE, on strength of No. 6 Canadian Construction Company, Royal Canadian Engineers, 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 East Grinstead, Sussex, detachment of No. 6 Cdn. Constr. Coy., R.C.E., did absent himself without leave from 0830 hrs., 1 February 1944 until rejoining his unit on 9 March 1944 at 1645 hrs.

(Total absence 36 days 8 hours 15 minutes)

(M.D.C. Spratt) A/Major, R.C.E.
OFFICER COMMANDING
NO 6 CDN CONSTR COY., R.C.E.

In the field

14 March 1944.

To be tried by Field General Court Martial

In the Field
16 Mar 44

(G.S.H. OOSTLING) Brigadier
Commanding "F" Group, C.R.U.

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Commanding "F" Group, C.R.U.

In the Field
16 Mar 44

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (D903)

(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.
G-21084	Spr		Lucien Joseph	CUELLETTE	6 C.C.C.,R.C.E.

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 Mar 1944 endorsed by me, (~~or on my behalf 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 stated 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	H.Q., C.R.U.

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Capt	from	C.G.R.U.
A Lieut	from	1 Cdn Adm Tpt.

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.)

Date 16 Mar 44

(Signed personally. RP 105 fn 2.)
(G.S.W.GOSTLING)
Commanding "F" Group, C.R.U.
Convening Officer.

Brigadier (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

Medical Officers' Certificate.
R.N., (Can) para 557

I certify that I have this morning examined No. G 21084

Rank & Name Spr. Ouellette, L.J.

of No 6 Cdn Constr Coy. ACE and in my opinion he is fit to undergo

trial by Court Martial.

STATION Field

DATE 17-3-44.

SGD [signature]
(Medical Officer)

PLEA OF MITIGATION

G 21084 Spr. Oullette L,J.

Sapper Oullette was born in the State of Maine, and was on e of a family of twelve. He left home when he was 14 and hasen't seen his parents since. He went to work in sawmills, farms., odd jobs here and there and kept moving on to other jobs whenever he felt the urge to go. He has had very little education and is not mentally bright. His civilian life shows a very distinct lack of discipline by his parents and weak character easily swayed by his own moods. Spr. Oullette is now 34 years old, an American citizen, and has been inthe Cdn Army since Sept 1939.

Whe did He join the Army?

Spr. Oullette was at the time he enlisted, a man without a job, and living in the State of Maine close to the Cdn Border, he saw an easy chance to get three meals a day when he needed it by enlisting in the Cdn Army, it was not hard to get across the border and say he was born in a small Quebec town and enlist as a Cdn. In the early days of the war the medicals were rather slack and it took about three minutes to pronounce him Cat. "A", and enlist him in the Infantry. A few weeks later he had a appendix operation after that he found it hard to keep up with the Infantry and so he was transferred to the Engineers. There have been several rechecks in Cat. and mental apptitude tests.introduced in the Army, Since Spr Oullette first enlisted, but somehow or other Oullette has never had a category recheck or tried his "M" test.

If these man had under gone these tests, he might not find himself in his present unfortunate circumstances.

In comparing his civil life with his Army life I find almost an exactly parellel story except that in his civilian life poor guidance care and discipline were shown to him by his parents and in the Army I think his superiors might be said to have shown the same poor guidance, care and discipline.

Regardless of what this mans Army record is, I feel that any corrective steps that could be taken possibly by a PULHEM test to correct this man rather than add further punishment to his Army record would be a step in the right direction. Possibly a Psychiatrist could put this man back intothe ranks as an asset ratherthan a liability. The passing judgment on this man I do ask you to consider the points I have brought out, and if it comes within your powers - to recommend that this man recieves proper guidance before being posted to a unit again.

G A Powell Lieut
Defending officer

NOTE E-3
MY

----oOo----

LIST OF WITNESSES WITH ADDRESSES

----oOo----

1. D.16368 A/L/Sgt. Valliere, J.L.N.
   No. 6 Cdn. Constr. Coy., R.C.E.

2. H.20259 A/Cpl. Mitchell, W.R.
   No. 6 Cdn. Constr. Coy., R.C.E.

3. K.57812 Sgt. Wilson, R.C.
   No. 6 Cdn. Constr. Coy., R.C.E.

4. A.4188 A/L/Cpl. Langlois, G.E.
   No. 6 Cdn. Constr. Coy., R.C.E.

.....

I hereby request that the Convening Officer appoint

Lt. G.C. Powell R.E.

to represent me at my forthcoming Court Martial.

L.J. Ouellette

(G.21084 Spr. Ouellette, L.J.)

Guildford, Surrey

14 March 1944.

I hereby acknowledge that I have received a true copy of the Summary of Evidence taken at Guildford, 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.

L.J. Ouellette

(G.21084 Spr. Ouellette, L.J.)

Guildford, Surrey

14 March 1944.

---oOo---

SUMMARY OF EVIDENCE

---oOo---

in the case of

G.21084 Spr. Lucien Joseph OUELLETTE
on strength No. 6 Canadian Construction
Company, Royal Canadian Engineers.

Summary of Evidence taken by direction of the Officer Commanding, No. 6 Cdn. Constr. Coy., R.C.E. and by direction of the Officer Commanding this Summary of Evidence is taken on oath.

------(o)------

FIRST WITNESS
FOR THE PROSECUTION

J L Valliere A/Sgt CMS

No. D.16368 A/L/Sgt. Valliere J.L. a soldier of the Canadian Army, Overseas, on strength of the 6th Canadian Construction Company, R.C.E., having been duly sworn states: "I am D.16368 A/L/Sgt Valliere, J.L. At orderly room 'Vic' detachment, at 1700 hrs approx on 31 Jan. 44, I warned the accused, who I now recognize, to report to the orderly room at 0830 hrs 1 Feb. 44 for movement orders. He was to move his kit from 'garage billets' to 'Parish Hall billets'. At 0830 hrs on 1 Feb. 44 at 'Vic' detachment orderly room I was present and the accused failed to report and was not present.

I was acting administrative sergeant from 1 Feb. to 4 Feb. 44 and from 14 Feb. to 9 Mar. 44 and no report of the accused presence was received by me until at 1650 hrs on 9 Mar 44 when on entering orderly room L/Cpl. Langlois, A.4188, reported that the accused had just surrendered."

Signed (J.L. Valliere, A/L/Sgt.)

The accused declines to cross examine the witness.

C M Stanbury Lt

(C.M. Stanbury) Lieut., R.C.E.
Officer detailed to take down
Summary of Evidence.
In the field
11 March 1944.

SECOND WITNESS
FOR THE PROSECUTION

No. H.20259 A/Cpl. Mitchell, W.R., a soldier of the Canadian Army, Overseas, on strength of the 6th Canadian Construction Company, R.C.E., having been duly sworn states:

"I am H.20259 A/Cpl. Mitchell, W.R. At 2230 hrs on 1 Feb 44 I called Tattoo Roll Call. The accused whom I now recognise did not answer his name and was not present, and was not present on any subsequent roll call."

Signed(W.R. Mitchell, A/Cpl.)

The accused declines to cross examine the witness.

C.M. Stanbury Lieut.

(C.M. Stanbury) Lieut., R.C.E.
No 6 Cdn. Constr. Coy., R.C.E.
Officer detailed to take down
Summary of Evidence.
In the field
11 March 1944.

THIRD WITNESS
FOR THE PROSECUTION

No. K.57812 Sgt. Wilson, R.C., a soldier of the Canadian Army, Overseas, on strength of the 6th Canadian Construction Company, R.C.E., having been duly sworn states:

"I am K.57812 Sgt. Wilson, R.C. of No 6 Cdn Construction Coy R.C.E. stationed at the 'Vic' detachment. On 4 Feb 44 at 1200 hrs approximately, I took over the duties of administrative N.C.O. from D.16368 A/L/Sgt. Valliere, J.L. On 14 Feb 44 at 1200 hrs approximately D.16368 A/L/Sgt. Valliere J.L. resumed the duties of administrative N.C.O. During my duties of administrative N.C.O., Spr. Ouellette, L.J., G.21084, whom I now recognise was absent and no report of his presence was received by me."

Signed(R.C. Wilson, Sgt.)

The Accused declines to cross examine the witness.

C.M. Stanbury Lt

(C.M. Stanbury) Lieut., R.C.E.
No. 6 Cdn. Constr. Coy., R.C.E.
Officer detailed to take down
Summary of Evidence.
In the field
11 March 1944.

FOURTH WITNESS
FOR THE PROSECUTION

No. A.4188 A/L/Cpl. Langlois, G.E., a soldier of the Canadian Army, Overseas, on strength of the 6th Canadian Construction Company, R.C.E., having been duly sworn states:

"I am A.4188 A/L/Cpl. Langlois, G.E. At 'Vic' detachment orderly room No. 6 C.C.Coy., R.C.E. at 1645 hrs on 9 Mar 44, the accused whom I now recognize surrendered to me. He was sober and properly dressed in military uniform. I informed D.16368 A/L/Sgt. Valliere, J.L. who placed him under close arrest."

Signed(G.E. Langlois, A/L/Cpl.)

The accused declines to cross examine the witness.

C.M. Stanbury

(C.M. Stanbury) Lieut., R.C.E.
No. 6 Cdn. Constr. Coy., R.C.E.
Officer detailed to take down
Summary of Evidence.
In the field
11 March 1944.

STATEMENT OF ACCUSED

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 G.21084 Spr. Ouellette, L.J. on strength of the 6th Canadian Construction Company, R.C.E., a soldier of the Canadian Army, overseas, states:

"I wish a defending officer as soon as possible to prepare my case."

Signed(L.J. Ouellette, Spr.)

C.M. Stanbury Lt.

(C.M. Stanbury) Lieut., R.C.E.
No. 6 Cdn. Constr. Coy., R.C.E.
Officer detailed to take down
Summary of Evidence.
In the field
11 March 1944.

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

C.M. Stanbury Lt.

(C.M. Stanbury) Lieut., R.C.E.
No. 6 Cdn. Constr. Coy., R.C.E.
Officer detailed to take down
Summary of Evidence.

In the field
11 March 1944.

EXA
MY

2nd Witness H 20259 A/Cpl Mitchell W.R.

I H 20259 A/cpl. Mitchell W.R at 2230 hrs. on 1 Feb 44 called Tattoo Roll Call. The Accused whom I now recognise did not answer his name and was not present and was not present on any subsequent roll call

The accused declines to cross examine the witness CMS
11 march. 44.

A/ cpl. Mitchell W.R.

4th Witness A4188 A/L/cpl. Langlois G.E

I A4188 A/L/cpl. Langlois G.E. at 'Vic' detachment orderly room No 6 CC Coy RCE at 1645 hrs on 9 Mar 44 the Accused whom I now recognize surrendered to me. He was sober and properly dressed in military uniform.

I informed L/sgt Vallerie who placed him under close arrest.

The accused declines to cross examine the witness CMS
11 march 44

A/L/cpl. Langlois G.E.

1st Witness D16388 A/L/sgt Valliere J.L.

I D16368 A/L/sgt Valliere J.L at orderly Room Vic detachment at 1700 hrs on 31 Jan 44 warned the accused who I now recognize to report to the orderly room 0830 hrs 1 Feb 44 for movement orders.

CMS of No. 6, Cdn Constr. Coy R.C.E. at East Grinstead, Sussex (approx)

He was to move his kit from 'garage billets' to 'Parish Hall billets'

(PTO)

Witness A/L/Sgt. Valleric J. L (continued).
at 0830 hrs on 1 Feb 44 at 'Vic' Detachment
orderly room was present and the accused
failed to report and was not present.

I was acting administration sergeant
from 1 Feb to 4 Feb 44 and from 14 Feb
to 9 Mar 44 and no report of the
accused presence was received by me
until at 1650 hrs on 9 Mar 44 when on
orderly room L/Capt/ Langlois.
Reported that the accused had just
surrendered.

/s/ Valleric A/S/Sgt

11 March 1944

The accused declines to cross examine
the witness

CMS.

3rd Witness

K 57812 Sgt. Wilson R.C. on strength of No. 6 Cdn. Construction Coy. R.C.E. having been duly sworn states.

I am K. 57812 Sgt. Wilson R.C. of No. 6 Cdn Construction Coy R.C.E. stationed at the 'Vic' detachment.

On 4 Feb 44 at 1200 hrs approximately, I took over the duties of administrative N.C.O. from S/Sgt. Valliere J.S.N.

On 14 cms Feb 44 at 1200 hrs approximately D 16368 L/Sgt. Valliere J.S.N. resumed the duties of administrative N.C.O.

During my duties of administrative N.C.O Spr Ouellette S.J. 621094 cms ~~[illegible]~~ ~~[illegible]~~ cms whom I now recognise was absent and no report of his presence was received by me.

The accused ~~[illegible]~~ declines cms to cross examine the witness.

11 Mar. 1944

K57812 R.C. Wilson Sgt.

(5)

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 C21037 Spr Ouellette L.J. on strength of the 6th Cdn Construction Coy. R.C.E. a soldier of the Cdn Army overseas states:

I wish a defending officer as soon as possible to prepare my case

11 March 44

Spr. L.J. Ouellette

I certify that the foregoing summary of evidence of four pages was taken down in the presence and hearing of the accused and that rules of Procedure 4 (c)(d)(e) and (5) have been complied with.

In the field
11 March 44

C.M. Stanbury Lt.

MFM 6
(AFB 122)
40/PAM/106 (3428)

No. G.21084 Name OUELLETTE, L.J. | Sqn, Battery, or Company | Corps R.C.E | Date of enlistment 13 Sep 39 | 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 (Signed) Adjt.,

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	17/8/40	Pte.		(1) A.A.15(1) A.W.L. 16 days (2) A.A.10(3) Resisting arrest	Documentary	28 days detn.	17 Aug 40	(Signed)	Total forf of 44 days pay
"	27/11/40	"		(1) A.A.15(1) A.W.L. 45 days (2) A.A.24(2) Losing kit value £1.2.9	Documentary	28 days detn. Stoppages £1.2.9	22 Nov 40	(Signed)	Total forf of 65 days pay
"	6/1/41	"		A.A.15(1) A.W.L. 51 days	Documentary	120 days detn.	6 Mar 41	F.G.C.M.	Total forf of 139 days pay
"	18/5/41	"		A.A.15(1) A.W.L.32 days 14 hrs 30 min Sentence confirmed by Maj.-Gen. L.F. Page, mitigated to 6 months detention Released from Detn Barracks, Whitley on 8 Nov. 41 Remission earned 89 days.	Documentary	6 mths Hard Labor	9 Jul 41	F.G.C.M.	Total forf of 226 days pay
"	14/8/42	Spr		A.A.15(1) A.W.L. from 1030 hrs to 1430 hrs 14 Aug 42 (4 hrs)	Cpl. Favel	5 days C.B.	16 Aug 42	(Signed)	
"	2/10/42	"		A.A.15(1) A.W.L. from 0745 hrs 2 Oct 42 until 2200 hrs 2 Oct 42(14 hrs 15 min)	Cpl. Morin R.	6 days pay	3-10-42	Lieut Farquhar	1 days pay 149(1)(a).

(P.T.O.)

(P.T.O)

ETC

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	12/10/42	Spr.		A.A.15(1) A.W.L. from 0745 hrs 12 Oct 42 until 2130 hrs 12 Oct 42(13 hrs 45 min)	Cpl.Martin G.	7 days F.P. 7 days pay 149(1)(b).	14 Oct 42	Capt GrossP.N.	1 days pay 149(1)(a).
"	11/7/43	"		A.A.15(1) A.W.L. 6 days 20 hrs 16 min	Sgt St Amand J.A.	168 hrs detn.	20 Jul 43	Maj. HD Duff	Total forf of 14 dayspay
"	16/10/43	"		A.A.15(1) A.W.L. 1 day 9 hrs 15 min.	Sgt Simpson WS L/Cpl Smith WJ	6 days pay FR&I 149(2)	19 Oct 43	Maj. MJC Spratt	2 days pay 149(1)(a).

CERTIFIED TRUE COPY OF ORIGINAL
IN MY POSSESSION.

.....ADJT.
No. 6 CDN. CONSTR. COY. R.C.E.
14 Mar 44

ETC

M F R 155

25M—5-41 (572-3)
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)
G.21084	SAPPER	OUELLETTE Lucien Joseph	No 6 CDN CONSTR COY RCE

1. The following is a fair and true summary of the entries in the ~~[illegible]~~ Regimental ~~[illegible]~~ N/A or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~[illegible]~~ N/A 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)	two times	A.A.Sec.15(1)	seven	times
For	times	A.A.Sec.10(3)	one	times
For	times	A.A.Sec.24(2)	one	times
For	times			times

~~[illegible]~~ N/A ~~[illegible]~~ N/A ~~[illegible]~~ N/A

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

2. ~~[illegible]~~ N/A ~~[illegible]~~ N/A

Previous convictions of the accused by a court-martial ~~[illegible]~~ N/A of summary awards under ~~[illegible]~~ N/A 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.

~~[illegible]~~ N/A

The accused at the present time is under sentence for N/A beginning on the N/A day of N/A

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 8 days in ~~[illegible]~~ N/A military custody, making a total of 8 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 33 years 11 months ~~[illegible]~~ N/A 21 days

6. The date of his ~~[illegible]~~ N/A attestation specified in his record of service is 13 Sep 39 ~~[illegible]~~ N/A

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

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 ~~[illegible]~~ N/A ~~[illegible]~~ N/A reward ~~[illegible]~~ N/A military ~~[illegible]~~ N/A ~~[illegible]~~ N/A ~~[illegible]~~ N/A

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 ~~[illegible]~~, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number G.21084 Rank Sapper Unit

Name Lucien Joseph OUELLETTE of No. 6 Cdn. Constr. Coy., R.C.E.

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
F.G.C.M.	In the field 8 Mar. 41	A.A.Sec.15(1)	120 days detention	---
F.G.C.M.	In the field 9 Jul. 41	A.A.Sec.15(1)	6 months Hard Labor - Sentence mitigated to 6 mths detn. by Maj-Gen. L.F. Page.	Remission of 59 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 ~~[illegible]~~ 1771 day of March 1942. No. 6 CDN. CONSTR. COY. R.C.E.

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

311 B. Pte Oullette. L. J.

G-21084 Pte. Ouellette, L.J.
No.2 Cdn Inf Hldg Unit.

Orig

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 7th day of July, 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; *[~~and that it is not practicable to delay the trial for reference to a superior qualified officer~~] P.

* 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~~) P.

~~[or the following reasons namely~~]

President.

Rank.	Name.	Regiment.
Major	A.W. Wright	No.2 Cdn Inf Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain	J.L. Charlebois	No.1 Cdn Inf Hldg Unit
Lieutenant	H. Weville	No.3 Cdn Inf Hldg Unit
Lieutenant	L. Riddell	No.3 Cdn Inf Hldg 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 L. F. [illegible], Major-General

Commanding Cdn Base Units, Cdn Army.

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*)
G-21084 PTE. OUELETTE, L.J. No.2 Cdn Inf Hldg Unit.	First Charge A.A. sec 15(1)	Guilty	Guilty Six months imprisonment with hard labour.	I confirm the finding & sentence of the Court but mitigate the sentence in so much as it refers to imprisonment & substitute for same a stoppage of £10 per month for one month. A.W.W. Wright Major 9-7-41
	See charge sheet attached.			Stoppage amounting to £4-2-3. A.W.W. Wright Major

* 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) L. F. Page. Major-General (Signed) A.W.S. Wright Major
2 C.F.H.U.
Commanding Cdn 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 ninth day of July, 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~~) A.W.W. Short hand writer
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this ninth day of July 1941.
A.W.S. Wright 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
A.W.W. Wright 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 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 18th day of July 1941.
L. F. Page - Major-General.
Confirming Officer.

Promulgated and extracts taken in the case of G 21084 Pte Ouellette, L J, C & R. (2 C.I.H.U.)

(*a*) (Dated) 24th July 1941 (Signed) J. M. Matheson
Lieut Qtr
Officer Commanding
No. 2 Cdn. Inf. Holding Unit
C.A.S.F.

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 Regimental Number G21084 Private Ouelette L.J. Carleton & York Regiment Reinforcement, No. 2 Canadian Infantry Holding Unit, a soldier of the Canadian Army (Overseas) is charged with, when on active service:

First Charge
Sec 15(1)
Army Act

When on active service absenting himself without leave,

in that he,

at Laurentide Camp (102) Witley, Surrey, absented himself without leave from 1300 hours 28th day of May 1941 until apprehended by the Military Police at Liverpool, England, at about 0330 hours on the 20th day of June 1941, thereby incurring expenses for his apprehension and return to the amount of £4-2-3.

(F.S. MATHEWSON) Lt.-Col
Officer Commanding
No. 2 Cdn. Inf Holding Unit

30 June 1941
Laurentide Camp
Witley, Surrey

To be tried by Field General Court Martial

(L.F. Page) Major-General
Commanding Cdn Base Units

Bordon Hants
This 7th day of July 41.

Alexis Wright Major
President

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 552

I certify that I have this morning examined

No. G-21084 Pte. Ouellette, L.J.

of C.& Y.Regiment No.2 Cdn.Holding and in my opinion he

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

Station, Laurentide Camp

Date 9 July 1941

Medical Officer

Charles Wright Major
President

No. G-21084, Pte. OUELLETTE L.J., No. 2 Canadian Infantry Holding Unit, tried by Field General Court Martial at WITLEY, Surrey, on the 9th day of July, 1941.

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

Prosecutor:	Lieut. J.H. Chicoine,	No. 2 CIHU.
Defending Officer:	Lieut. M. Cote,	No. 2 CIHU.

At 1100 hrs 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 B66944, Sgt. T. Pyburn, R.Regt.C., Canadian Base Units, 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 on 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 Guilty, sir.

R.P. 35 (B) is complied with by the Court.

THE COURT: You are defending officer; have you anything to say in mitigation of sentence?

DEFENDING OFFICER: Just a few words, sir. Pte. Oullette has been in the army since Sep 39 and in Mar I think of 41 he underwent detention, but since that time he has never been in trouble, but also he has never been well, he has always felt a pain in his side and he cannot go for the drill (sic) or hard work. He did as a matter of fact ask for a re-board but they did not give it to him. Up to now I think he has a fairly good conduct sheet, but his physical condition is not so good. Because of the operation he underwent about sixteen months ago I would like the Court to take his past history into account. As I say, his field conduct sheet is fairly good, and I may say that even if he did undergo a Court Martial before there is an article in the MML, chap 6, para 17, which says character there shall not influence the Court but shall give the man every chance. That, gentlemen, is all I have to say.

THE COURT: As President of this Court, I am quite sure that no doctor would give a man a certificate certifying to his fitness to undergo trial by Court Martial unless the man concerned was physically fit to undergo trial, or saying that the man was physically fit to carry out any punishment given him by the Court in the event of him being found guilty.

(Page 2 follows)

Aw.es.

The Prosecutor, LIEUT. J. H. CHICOINE, No. 2 Canadian Infantry Holding Unit, being duly sworn, states:

Sir, I wish to present to the Court A.F. B296 and certified true copy of MFM-6. I have compared the contents of these forms with the regimental records and I know they are correct.

The defending officer declines to cross-examine this witness.

THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE

Aw. W.

SUMMARY OF EVIDENCE

in the case of

Regimental Number G21084 Pte Ouelette, L.J., Carleton & York Regiment No. 2 Canadian Infantry Holding Unit, a soldier of the Canadian Army (Overseas)

The evidence is taken under oath by direction of the Officer Commanding:

First Witness Prosecution — Regimental No. G18033 Sgt. Gunter, J.M. Carleton & York Coy No. 2 Canadian Infantry Holding Unit, having been duly sworn, states:

At Laurentide Camp on the 28th May 1941 as Orderly Sergeant, I called the Roll of the C & Y R Company at 1300 hours, and I found the accused, whom I recognize, was absent. He had been granted leave till 1300 hours and failed to report.

J M Gunter Sgt.

The accused declines to cross-examine the witness.

Second Witness Prosecution — Lieut. W.A. Leask, West Nova Scotia Regiment, No.2 Canadian Infantry Holding Unit, having been duly sworn, states:

I am in charge Records at #2 C.I.H.U. I produce Form B252 relating to the accused's arrest in Liverpool on the 20/6/41 and on the reverse side the evidence of L/Cpl L. Gibson and D. Cawood of the C.M. Police.
Also Statement of Expenses incurred in apprehension of Accused, signed by Capt. V. Harriss Goad.

W A Leask Lieut.

30 June 1941
Laurentide Camp
Witley, Surrey

Certified that R.P. 4, c,d,e,and f have been complied with. The accused accepts the written evidence shown on Form B252 and does not wish the presence of these witnesses. The accused having been duly cautioned in accordance with R.P. 4 e reserves his defence.

Taken down in the presence and hearing of the accused.

J.H. Chicoine
(J.H. CHICOINE) Lieut.
Officer detailed by O.C. No.2 C.I.H.U. to take Summary of Evidence.

Aw. W-hay. Pres.

Aw. W.

LIST OF EXHIBITS

in the case of

G21084 Private Ouelette, L.J., Carleton & York Regiment Reinforcement, No. 2 Canadian Infantry Holding Unit, a soldier of the Canadian Army (Overseas)

(a) A.F.B. 252 dated 20-6-41

(b) Statement as to expenses incurred for apprehension and return.

Laurentide Camp
Witley, Surrey
2 July 1941

CHARGE

Army Form B 252
(See King's Regulations)

CARLETON - YORK CANADA

Regiment
Battery
Squadron
Troop or
Company

N° 2 CANADIAN INFANTRY HOLDING UNIT

CHARGE against No. G. 21084 Rank PTE.

Name QUELLETTE. L.J.

Place LIVERPOOL. Date of Offence 20.6.41.

OFFENCE W.O.A.S. Absent from ? until apprehended by the MILITARY POLICE in the Y.M.C.A. CHURCH STREET about 0320 hrs.

CANADIAN MILITARY POLICE
LONDON AREA

Names of Witnesses

L/CPL. L. GIBSON. C.M. POLICE

L/CPL. D. CAWOOD. C.M. POLICE

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

81102 Wt.W42348/1518. 2,000,000 2/41 K. & H. Ltd. G657/47

Statement of **EVIDENCE** in the case of
No G. 21084 Pte L.J. OUELLETTE,
No 2 CANADIAN INFANTRY HOLDING UNIT.
CARLETON YORK CANADA REGT.
WHITLEY.
SURREY.

Sir,

At LIVERPOOL on the 20-6-41 at about 0330 hrs I visited the Y.M.C.A. CHURCH STREET where I saw the above named soldier.

I asked him to produce his pass but he was unable to do so, he then informed me that he was absent from his unit.

I arrested and conveyed him to the OLD BRIDEWELL ARGYLE STREET and handed him over to the N.C.O. i/c guard to be detained pending escort.

LIVERPOOL.
20-6-41.

L. Gibson L/Cpl.
C.M. POLICE.

Sir I have read over and I corroborate the above statement.

REMARKS

LIVERPOOL
20-6-41

J Gaunt L/Cpl
C.M. POLICE

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

Regt.No: G-21084

Rank: Pte

Name: Ouellette L.J.

Regt: (Carleton & Yoerk Regt.)

Unit: No.2 Inf. Holding Unit.

The following expenses were incurred in apprehending and returning the m/n soldier to his unit from Liverpool.

DATE	PARTICULARS	AMOUNT		
23-Jun-41.	Escorts return fare from London to Liverpool	2	05	--
	Prisoners single fare to London from Liverpool	1	14	--
	Prisoners single fare from London to			
	Escorts expense for ~~XXX~~, meals, ~~XXXXXXXX~~ and meals for the prisoners.	-	03	03
	TOTAL -- £	4	02	03

I certify that the above statement of expenses is correct and that the amounts are fair and just.

V. Harriss Goad Capt.
(V. Harriss Goad)
D.A.P.M. Canadians.

NOTE.

No reimbursement for this account is to be sent to our office from your goodself, as the amount has been paid from petty cash and charged to Public Funds.

If the accused is found guilty a stoppage of pay should be put through your units Part II Orders.

Aw. W. Major
Pres.

STATEMENT BY ACCUSED

I desire the services of Lieut. Demontigny F.M.R.
to represent me at my trial if he is available.

(Signed) L.J. Ouellette Pte

I certify having been furnished with a copy of the Summary of Evidence, List of Witnesses for the prosecution, and that I have been given a copy of the documentary evidence. I do not wish to have the witnesses giving documentary evidence appear at my trial.

(Signed) L.J. Ouellette Pte

Laurentide Camp.
2 7/41

Aw.10

No. G21084 Name Ouellet L | Sqn., Battery, or Company D | Corps | Date of enlistment | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 133)

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
DELVILLE Brks	5-3-40	Pte		Absent from Parade (night march)	Cpl D Lapointe	Admonished	6-3-40	Major Tweedie	
Effingham	11 July 40			Insubordination and Insolence	L/C Levesque	5 days C.B. with pack drill	12 July 40	Capt J.D. Rousseau	
Old Woodstock	15 July 40			AWL 15 July 40 9000 hrs 2300 hr 30 July 40	L/Sgt McDonald	15 days Pay	5 Aug 40	L/Col Ganong H.	
" "	19 July 40			Resisted arrest	" "	28 days detention	5 Aug 40	Lt-Col. Ganong	
Witley, Eng	28-12-40			AWL from 2200 hr 28-12-40 to 2000 hr 17-2-41		120 days detention	8-3-41	F.O.C.H.	
				RELEASED FROM THE DETENTION BARRACK WITLEY on May 27 1941 sentence having expired. Remission earned under Rules for Detention Barracks and Military Prisons 39 days.					

(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
WITLEY ENG					Sgt Clifford	120 days det.	8-3-41	FGCM	Forfeits 19 days pay
	28-12-40	Pte		A.A. 15(1) AWL from 2200 hrs 28-12-40 until 2000 hrs 17-2-41					

Certified true copy
L Cameron Lieut

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 22nd day of July 1941

[signature] Capt Adjutant, 6 2 Inf. Rifle Holding Unit, (C.A.S.F.)

Exhibit A.

Aweis Wright Major President.

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

621084 Pte Ouellette, L. J. of the Carleton & York Regiment Reinforcement No. 2 Canadian Infantry Holding 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.

(See Para. 664, K.R., 1935.

*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.

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.W.L.	3	times	4	times.
For Other Crime	2	times	2	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.

Wt. 43048/604 50,000 2/40 W. S. Ltd. 51—6004

Aw. w.

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 ..... days in Civil Custody,

and 29 days in Military Custody.

Total ~~19~~ 20 days.

Of which no. days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ / attestation paper is 20 yrs 10 mths

6. The date of his ~~commission~~ / attestation specified in his ~~record of service~~ / attestation paper is 13 Sept. 1937

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 ..... years' service.

9. The accused is entitled to reckon ..... 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 [*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.

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 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.O.C.M.	8/7/41	15(1) A.A.	120 days detention	39 days.

(Continued overleaf.)

69 a

10/0/96

G. 21054 Pte Ouellette L. J.
No 2 Cdn Inf. Hold. Unit

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 7th day of March, 19 42.

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*)
G-21084 PTE. OUELETTE, L.J. (C & Y R reinforcement. No. 2 Cdn Inf Hldg Unit.	First Charge A.A. Sec.15 (1) as per charge sheet	NOT GUILTY	GUILTY TO UNDERGO DETENTION FOR A PERIOD OF 120 DAYS.	Confirmed L. T. Pope Brig

* 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) L. T. Pope. Brigadier
Commanding Canadian Base Units, Cdn Army.
Convening Officer (*e*)

(Signed) H. Pope. Major
Lieut-Colonel, Royal Engineers, Holding Units.
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 6th 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~~) Court Stenographer
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 6th day of March 1941.

H. Pope. Major.
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*l*) 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 11th day of March 1941.

L. T. Pope. Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of G 21084 Pte Ouellette, L.J., C.&Y. Regt. on/o/A.C.I. 570

(*a*) (Dated) 15 Mar 41 (Signed) J. M. Matheson Lieut. Col.
Officer Commanding,
No. 2 Cdn. Inf. Holding Unit.
C.A.S.F.

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, G21084, Private Lucien Joseph Ouelette, on the strength of No. 2 Canadian Infantry Holding Unit, as a reinforcement for his regiment, a soldier of the Canadian Army (Overseas) is charged with:-

First Charge When on active service, absenting himself without leave

Sec 15 (1)

Army Act in that he

at Camp 102, Witley, Surrey, at 2200 hours, 28th December 1940 absented himself without leave until surrendering himself at Camp 102, Witley, Surrey, at 2000 hours, 17th February 1941. (Total absence, 50 days, 22 hours)

P.E. Belanger

(P.E. BELANGER) Major
Commanding
No. 2 Cdn. Infantry Holding Unit

Camp 102
Witley, Surrey
22nd February 1941

To be tried by Field General Court Martial

L. [illegible] Brigadier
Commanding Can Base Units.

Bordon, Hants
This 4th day of March 41.

[illegible] Major

G-21084, Pte. Ouelette, L.J., No. 2 Cdn. Inf. Holding Unit, tried by Field General Court-Martial at Witley, Surrey, on the 6th day of March, 1941.

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

Prosecutor - Lieut. G.A. Addy
Defending Officer - Lieut. W.G. Kersey.

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-16577 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.

The prosecutor proceeds to call witnesses.

First witness for the prosecution, Lieut. J.H. MacIntosh, Officer in charge of records, No. 2 Cdn. Inf. Holding Unit, being duly sworn, is examined by the prosecutor.

Q4 - I wish you to submit as an exhibit the declaration of a Court of Inquiry concerning the accused.
A4 - I submit the declaration of a Court of Inquiry, certified as a true copy by myself, and it concerns the accused whom I recognize.

The defending officer declines to cross-examine this witness.

Second witness for the prosecution, L/Cpl. Carpenter, I.D., G-17079, No. 2 Cdn. Inf. Holding Unit, being duly sworn, is examined by the prosecutor.

Q5 - Would you give your number, rank, name and unit?
A5 - G-17079, L/Cpl. Carpenter, I.D., No. 2 Cdn. Inf. Holding Unit.
Q6 - Would you recognize Pte. Ouelette if you saw him?
A6 - Yes, sir.
Q7 - Is he in the court-room?
A7 - Yes, sir. (Indicates the accused)
Q8 - Were you orderly corporal on the 17th February?
A8 - Yes, sir.
Q9 - What happened that day?
A9 - Ouelette reported to me at 2000 hours on the 17th February.
Q10 - Where?
10 - At the company orderly room.
11 - What did you do?
1 - I placed him under open arrest.

defending officer declines to cross-examine this witness.

case for the prosecution is closed.

Q12 - Do you apply to give evidence yourself as a witness?
A12 - No, sir.
Q13 - Do you intend to call any other witness in your defence?
A13 - No, sir.
Q14 - Have you anything to say in your defence?
A14 - No, sir.

The Court is closed for the consideration of the finding.

Lieut. C.A. Addy, No. 2 Cdn. Inf. Holding Unit, is duly sworn.

Q15 - Have you any evidence to produce as to the character and particulars of service of the accused?
A15 - I produce A.F.B. 296 and N.F.M. 6 relating to the accused.
Q16 - Is the accused the person named in the statement which you have heard read?
A16 - Yes, sir.
Q17 - Have you compared the contents of the above statement with the regimental books?
A17 - No, I haven't, sir, but it is certified by the Adjutant whose signature I recognize.

The accused declines to cross-examine.

Q18 - Do you wish to address the Court?
A18 - (Defending Officer) The accused is now perfectly willing to plead guilty and accept any punishment the Court sees fit, but there are a few things I would like to bring to your attention. First of all the man was employed as a batman which I find he didn't like and it has quite a bit to do with him absenting himself without leave. Going back over his record I have found him to be a very good soldier and we had no trouble with him at all. He reported himself back to his unit which in itself shows he intended to come back to take his punishment and go on and be a good soldier. I am now sure he will do his best to be a good soldier.

The Court is closed for the consideration of the sentence.

SUMMARY OF EVIDENCE

in the case of

G21084 Private Lucien Joseph Ouelette, on the strength of No. 2 Canadian Infantry Holding Unit as a reinforcement for his regiment, a soldier of the Canadian Army (Overseas).

Evidence taken on oath by order of the Commanding Officer.

First Witness Prosecution — Lieut. I.H. MacIntosh having been duly sworn, states:

I am Acting Records Officer of No. 2 Canadian Infantry Holding Unit. I produce herewith:

(a) Record of Declaration of Court of Inquiry, 25-1-41

This concerns the accused, whom I recognize.

. . . . . Lieut.

Accused declines to cross-examine the witness.

Second Witness Prosecution — G17079 L/Cpl Carpenter, I.D. having been duly sworn, states:

On 17th February 1941, I was Orderly Corporal of No. 3 Company, No. 2 Canadian Infantry Holding Unit. At 2000 hours, Pte. Ouelette L.J. reported himself to me at the Orderly Room of No. 3 Company as a returned absentee. I placed him under open arrest.

. . . . . L/Cpl

Accused declines to cross-examine this witness.

Compliance with R.P.4(c) (d) (e) certified.

Malcolm Mac Pherson, Lieut.
Officer detailed by O.C. No. 2 Cdn.
Infantry Holding Unit, to take
summary of evidence.

Camp 102
Witley, Surrey
22nd February, 1941

LIST OF WITNESSES

in the case of

G21084 Private Lucien Joseph Ouelette, on the strength of No. 2 Canadian Infantry Holding Unit, as a reinforcement for his regiment, a soldier of the Canadian Army (Overseas).

PROSECUTION

Lieut. I.H MacIntosh, No. 2 Canadian Infantry Holding Unit

G17079 L/Cpl Carpenter, I.D. No. 2 Cdn. Infantry Holding Unit.

LIST OF EXHIBITS

in the case of

C21084 Private Lucien Joseph Ouelette, on the strength of No. 2 Canadian Infantry Holding Unit, as a reinforcement for his regiment, a soldier of the Canadian Army (Overseas)

(a) Record of Declaration of Court of Inquiry, 25-1-41.

755

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 Witley Camp 102, Witley, Surrey, on 25th January 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. G21084 Pte. Ouelette, L.V. (C.Y.R. No. 2 Canadian Infantry Holding Unit C.A.S.F.)

DECLARATION

The Court declare that G21084 Pte. Ouelette L.V., 2 Canadian Infantry Holding Unit (C.Y.R.) illegally absented himself without leave at Witley Camp 102 at 2200 hrs on the twenty-eighth day of December 1940, that he is still so absent and that on the twentieth day of January 1941 he was deficient, and that he is still deficient of the following articles to the value of :

Ration Bag	2½
Bottle Water	2 - 9
Braces 2	7 - 4 3/4
Carriers Water Bottle	3 - 10
Mess Tin Cover	3
Helmet Steel	7 - 0
Pack	10 - 7 3/4
Strap web	2 - 8½
Capes A.G.	13 - 6
Shoes Canvass	3 - 6
2 Drawers Woolen	12 - 6
2 Shirts Woolen	1 - 0 - 0
1 Shirt Flannel	9 - 5
Battle Dress Blouse	1 - 2 - 6
Battle Dress Trousers	1 - 0 - 6
Respirator Facepiece	9 - 9
" Cannister	3 - 10
" Haversack	4 - 7
Ointment Anti-dim	3
" Anti-gas	9½
Eyeshields	2 - 0
Total Deficiency	£7 -17 - 11

Signed:

W.J. Mac Callum, Major — President 2 CIHU

D.W. Hay, Lieut — Members 2 C.I.H.U

A.J Blakeney, Lieut — " 2 C.I.H.U.

APPROVED (Signed)

S. Mathewson, Lt. Col.
O.C. No. 2 Cdn. Inf. Holding Unit.

Certified true copy
J.J. MacIntosh Lieut
Officer i/c Original Records

Description of Court by which trial, 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 8th day of Feb 1941 Marcel

[signature] Adjutant, No. 2 Inf. Hdqs. Holding Unit, (C.A.E.F.)

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

G 21084 Pte Lucien Joseph Ouelette of the No 2 Cdn. Inf. Holding 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.

See Para. 664, K.R., 1935.

*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.

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 Absent Without Leave	/	times	/	times.
For Absent from Parade	/	times	/	times.
For Insubordination & Insolence	/	times	/	times.
For Resisting Arrest	/	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.

Wt. 43648/964 50,000 2/40 W. S. Ltd. 51—6004

JB

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 _____ days in Civil Custody,

and 420 days in Military Custody.

Total 420 days.

Of which _____ days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 30

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 13 Sept 1939

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 5/12 years

8. The accused is entitled to deferred pay or gratuity in respect of 1 5/12 years' service.

9. The accused is entitled to reckon 1 5/12 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 [~~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 , and in his regiment (*or* corps *or* department) the rank of , dated , 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.

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

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 statement 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.

(Continued overleaf.

I certify that No. G-21084 Rank Pte.

Name Ouellette, L.J. Regiment C.W.R.

is

to undergo trial by Court-Martial.

Date 8-3-41

M.O. Signature.

No. G21084 Name Ouelette L | Sqn., Battery, or Company D | Corps | Date of enlistment | 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.

M F M 6 (A F B 133) 10074—8-39 (7703) H.Q. 1772-45-18

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
Delville Brks	5-3-40	Pte		Absent from Parade (Night March)	Cpl D. Lapointe	Admonished	6-3-40	Major I. D. Tweedie	
Effingham	11 July 40	Pte		Insubordination and Insolence	L/C Levesque J.M.	5 dys CB with Pack drill	12 July 40	Capt J.B. Rousseau	
Old Woodstock	15 July 40	Pte		AwL 15 July 40 1000 hrs to 2300 hrs 30 July 40	L/Sgt McDonald	15 days pay	5 Aug 40	Lt.-Col Ganong	
"	"			19 July 40 Resisted Arrest	"	28 days detention	5 Aug 40	Lt-Col Ganong	

(P.T.O.) 35

M.F.M. 6
(A.F.B. 122)

No. G21084 Name Ouelette L Sqn., Battery or Company D Corps 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. | 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 award	By whom awarded	Remarks
Delville Pks	9-3-40	Pte		Absent from Parade (Night March)	Cpl D. Lapointe	Admonished	6-3-40	Major I. D. Tweedie	
Effingham	11 July 40	Pte		Insubordination and Insolence	L/C Levesque	J.M. 5 dys CB with Pack drill	12 July 40	Capt J.B. Rousseau	
Old Woodstock	15 July 40			Pte AwL 15 July 40 1000 hrs to 2300 hrs 30 July 40	L/Sgt McDonald	15 days pay	5 Aug 40	Lt.-Col Canong	
"	"	19 July 40		Resisted Arrest	"	28 days detention	5 Aug 40	Lt-Col Canong	

(P.T.O.)

ARMY FORM B 116.

No. 2 Canadian Infantry Holding Unit *REGIMENT.*

STATION Camp 102, Witley, Surrey Date 22nd February 1941

Application for a Field General *Court-Martial.*

SIR,

I have the honour to submit one charge against No. G21084 Private Lucien Joseph Ouelette (Carlt. & York Regt. Reinforcements) of the Unit under my command, and request you will obtain the sanction of Cmdg. Officer Cdn. Base Units that a Field Gen Court-Martial may be assembled for his trial at Camp 102, Witley, Surrey.

The Case was investigated by (*a*) Major W.J. Mac Callum, Major P.E. Belanger, and Lieut. M. MacPherson

A Court of Inquiry was held on (*b*) 25th January 1941 (date) at Camp 102, Witley, Surrey (Station).

President Major W.J. Mac Callum, 2 C.I.H.U.

Members { Lieut. D.W. Hay 2 C.I.H.U. / Lieut. A.J. Blakeney 2 C.I.H.U. } Ranks, Names and Corps.

The accused is now at Witley His General Character is (*c*) Bad

I enclose the following documents (*d*) :—

1. One Charge Sheet (in duplicate) (*e*).
2. Summary of Evidence, original (*f*) and one copy.
3. Original Exhibits (*g*).
4. List of witnesses for the prosecution and defence (with their present stations or addresses) (g).
5. List of Exhibits (*h*).
6. ~~Documentary evidence~~ (*g*).
7. Statement as to character (A.F.B. 296) and regimental and company, etc., conduct sheets of accused (g).
8. Statement by accused as to whether or not he desires to have an officer assigned by the Convening Officer to represent him at the trial (*h*).

[R.P. 14 (B)].

I have the honour to be,
Sir,
Your obedient Servant,

Prosecutor:
Lieut. G.A. Addy
No. 2 Cdn. Inf. Holding Unit

Signature of Commanding Officer for J.E. Belanger Major
Officer Commanding,
No. 2. Cdn. Inf. Holding Unit.
C.A.S.F.

To Officer Commanding
"A" Group Holding Units

"T.G.T."

MEDICAL OFFICER'S CERTIFICATE. No. 2 C.I.H.U.

I CERTIFY that No. G21084 Pte. Ouelette, L.J. Regiment is* fit to undergo trial by Court-Martial.

Signature of the Medical Officer Lucien Ouellette Capt. R.C.A.M.C.

* Insert "fit" or "unfit."

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

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

(c) To be filled in by the Commanding Officer.

(d) Any items not applicable to be struck out.

(e) One copy to be sent to the President ; one copy to be filed with the application for trial.

(f) Original summary of evidence to be sent to the President.

(g) 3, 4, 6 and 7 to be returned to the Officer Commanding the unit of the accused with the notice of trial.

(h) 5 and 8 to be sent to the President.

If the accused has elected to be tried under A.A. 40 (8) the fact should be recorded at the top of this form.

(11562) Wt.12663/316 20,000 6/40 A.S.K.W.Ltd. Gp.698
(13429) Wt.4726/381 120,000 1/40 " " Forms/B116/16

X-119

Pte OUELLET L.P.

X-119

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 TWENTY-SEVENTH day of JANUARY, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 2nd CANADIAN DIVISION 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 [illegible] qualified officer.~~] jul.

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.)~~ jul.

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

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

* Omit if not applicable.

Proceedings Reviewed

"A"

Major

139

RECEIVED 1 FEB 1943

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	M C UPPER	R H L I

Members.

Rank.	Name.	Regiment.
LIEUT	W H JAMIESON	R REGT C
LIEUT	A F THORBURN	R REGT 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 jul Roberts

(J H Roberts) Maj-Gen

Commanding 2 Canadian Division

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)
E29396 Pte Louis Philippe Ouellet, 2 Cdn Div Amn Coy (4 Coy) RCASC	FIRST CHARGE Section 11 Army Act Neglecting to obey a Regimental Order (See charge sheet attached)	Not Guilty	Guilty.	
	SECOND CHARGE Section 40 Army Act (Alternative) Condcut to the Prejudice, etc. (See charge sheet attached)	Not Guilty	NOT. Guilty.	
			Eight Months Detention. Jan 29/43 M Clapper Major.	
			Confirmation refused. J.H.R.	

* 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 H Roberts (J H Roberts) Maj-Gen
Commanding 2 Cdn Div
Convening Officer (*e*)

(*Signed*) M Clapper Major
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.

CHARGE SHEET

The accused E-29396 Pte. Louis Philippe OUELLET of 2 Cdn Div Amn Coy (4 Coy) R.C.A.S.C. a soldier of the Canadian Army Overseas is charged with:-

1st charge
A.A.SEC. 11

Neglecting to obey a Regimental Order.

In that he, In The Field, on the 21 Jan 43 was concerned in the attempt to sell Canadian gift cigarettes which had entered the United Kingdom free of duty for the personal use of soldiers in the Canadian Army, contrary to Daily Part I Orders No. 154 dated 3 June 42 of 2 Cdn Div Amn Coy (4 Coy) R.C.A.S.C.

alternate charge
A A SEC 40

Conduct to the prejudice of good order and military discipline.

In that he In The Field on the 21 Jan 43 was concerned in the attempt to sell Canadian gift cigarettes which had entered the United Kingdom free of duty for the personal use of soldiers in the Canadian Army well knowing that it was illegal to do so.

H.A. Macdonell

Major H.A. Macdonell, O.C.,
2 Cdn Div Amn Coy (4 Coy) RCASC.

In The Field
23 Jan 43

TO BE TRIED BY F G C M

(J H Roberts) Major-General
Comd 2 Cdn Div
In the field, 26 Jan 43

I would like Capt P. F. Gosselin to represent me at my trial.

L. P. Ouellet

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

I certify that I have this morning examined No. E 29396 Pte Ouellet L.P. of 2nd Div Amm Coy RCASC and, in my opinion, he is fit ~~unfit~~ to undergo trial by Court Martial.

Station In the Field

Date 29 Jan 1943

[signature] Medical Officer

[signature] Major

Army Form A 9.

A

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

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

Proceedings of a Field General Court-Martial held at In the field on the 29 day of Jan 1943 by order of Maj. Gen J H Roberts Commanding 2 Cdn Div dated the 27 day of Jan 1943

President.

Major M C Upper RHL1

Members:

Lieut W.H. Jamieson R Regt C

Lieut A.F. Thorburn R Regt C

, Judge Advocate.

Trial of* E 29396 Pte Louis Philippe Ouellet 2 Cdn Div Amn Coy (4 Coy) RCASC

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~~ Mpu ~~is not available to serve owing to~~

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

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

The accused is brought before the Court.

Prosecutor,† Capt L A Dowling 2 Cdn Div Amn Coy (4 Coy) RCASC

Mpu ~~Counsel for~~ defending officer† Capt P F Gosselin

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.

Q1061. Wt.W48076/967. 40,000 sets. 2/43. K. & H. Ltd. G657/Ltd. Form A 9/33.

M C Upper M4W

B

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

~~The following officers under instruction are duly sworn.~~

Charge-Sheet.

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

Instruction. If the accused has elected to be tried under Army Act, sec. 16 (8) the fact should be here recorded.

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.

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 charge, the provisions of Rule of Procedure 45 (3) 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.

W. C. Chipper Major

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. yes Sir

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

The prosecutor proceeds to call witnesses.

First witness for prosecution. (See page C3)

being duly sworn, is examined by the prosecutor.

[signature] Major

C3

~~The Case of F 29396 Pte Louis Philippe Ouellet.~~
~~[illegible] Court [illegible] held at~~
~~[illegible] 1942 by order of~~
~~[illegible] Dated the 25th day of~~
~~January 1942~~

~~President Major M. C. Upper~~
~~Members Lieut. [illegible]~~
~~Lieut. A. F. [illegible]~~

1st Witness for Prosecution
Patrick Joseph Heslin - Det. Sgt. W. Sussex Constab.
Chichester.

~~[illegible]~~ duly sworn, states.

Pro - Witness I
Thurs 21 Jan 43 - appr. 7.15 P.M. South St. Chi.
with Det. Const. Evans. A canadian soldier came
up to us in the street and said "Do you want
to buy any cigarettes? two bob a packett? We
went into the shop doorway. He produced four orfine
packetts. Called over another soldier into the door-
way. I told them were police officers and were
arresting them. We called in a Cdn. Provost
who was passing. Boy had in possession 35 pkts
"Black Cat" 252 - Prisoners and cigs handed
over to Cdn Provost Corp.

Witness II
Arthur Charles Lewis Evans Det. Const. 217 - W. Sussex
Const. at Chichester

sworn states
Appr. 7.20 P.M. Thurs. with Det. Hesby at
Chi. a Cdn. soldier asked us "Do you want to
buy any cigs two bob a packett" and hustled us into
a doorway. He called up another soldier who was
a short way down the road - he asked me
"Do you want to buy any cigs" - he said he had

M C Upper Major

some packets. A Cdn. Provost was called in and we took the two men to the Police station, on searching Dulette he had 37 - Cdn. Legion packets.

Pros:
Q. - what did the accused say when he came up to you

A. He said: Do you want some cigarettes.

Witness 3
H 17190 W. Hares Cpl. #2 Prov. Coy. Cdn Prov Corps
sworn states:

Approx. 1920 hrs. Jan 21/43 in Chichester on patrol. On passing Charges Draper shop - heard conversation in the doorway. On investigation I found Det. Sgt Hesler and Det. Const Evans & two Cdn soldiers. I found they were trying to sell cigs to the two officers, I arrested the two soldiers and took them to the Chi police stn. On searching I found 950 for Roy Black Cut
925 Dulette British Cons

The two soldiers were escorted to #2 Coy Cdn Provost and put in Guard room. The next morning Sgt Rose took statements from these men.

Witness 4
B 95483 Sgt. W C Rose - #2 Provost Coy
sworn states

Jan 22/43 I questioned the accused and obtained a statement from them.
Dulette said he had received a parcel of 1000 cigs and was going to Chi. with another soldier to sell them. He was cautioned prior to making a statement.

M Capper Maj

Witness 5.

E 41064 Cpl Imbeault G. Sgt. Police sworn states:

On 22 Jan /43 at approx. 1000 hrs. I went to Chic. Police station and contacted Sgt Det. Heslin I inquired where the men were and found they were in #2 Cdn. Provost Corps detention, Met Sgt Rose in Bogna Regis and gave him a receipt for the two men and about 1800 Cdn. Cigs. I went back to Chic to see Det Sgt Heslin and another, to get a true copy and statement.

Witness Capt. L.A. Dowling (2 Cdn. Div. Arm.) sworn produces - certified true copy of that Part I Order
(marked Exhibit 'C')

M Cassin Mgr

D

The prosecution is closed.

Defence.

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

Answer. ~~Yes,~~

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

Answer. Yes

Question. Is he a witness as to character only? *Answer.* No

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?~~ Mlu

Answer. ~~The accused in his defence says†~~ Mlu

~~(hands in a written address which is read, marked~~ Mlu

~~signed by the President and attached to the proceedings~~ Mlu

[illegible] Maj

Instruction. † 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*.)

D 2

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.

The accused E29396 Pte L P. Quellet, duly sworn states:

I joined Roy when he called me and one of the civilians asked me if I had any cigarettes and I said yes.

Q.1. How far were you away from Roy at the time.

A.1 About fifteen feet.

2nd Witness E29304 Pte Roy R 2 div A Mn. Coy duly sworn states:

Question by Defence.

How far away from you was the accused when you called him.

Answer.

About fifteen feet.

Question by prosecution

How do you know that

Answer. I heard his footsteps and it took only a few steps to reach me

Defending officer makes a closing address.

Prosecutor makes a closing address.

McCaffer
Major

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 guilty of the first charge and not guilty of the second charge

Court re-opened and finding of not guilty read in open court

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

Proceedings on Conviction before Sentence.

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

Capt L. A. Dowling, Prosecutor 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* yes AFB 296 & MF M6

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

~~Cross-examined by the accused.~~ Mem

Def of a declines to cross-examine

[Observation.—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 additional 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.

[signature] Major

DAILY PART I ORDERS

BY

MAJOR P.H. SAVARD, O.C. 2 CDN DIV AMN COY (4 COY) R.C.A.S.C - C.A.A.F.
Number 154. (Last Part I Orders No. 153 d/2-6-42) 3rd June 1942.

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1. DUTIES

CAPTAIN OF THE WEEK.....CAPT. P.E. GOSSELIN

ORDERLY OFFICER.....LIEUT. J.F. PRIMEAU
Period from 1900hrs. 3-6-42 to 1900hrs. 4-6-42
Next For Duty.....Lieut. F.F. Duffy

ORDERLY SERGEANT.....SGT. LALIBERTE R.
Period from 1900hrs. 3-6-42 to 1900hrs. 4-6-42
Next For Duty.....Sgt. Devarennes E.

ORDERLY CORPORAL.....CPL. COTE B.
Period from 1900hrs. 3-6-42 to 1900hrs. 4-6-42
Next For Duty.....Cpl. Fishman A.

2. PARADES (For THURSDAY 4 Jun 42)
0800 hrs.....As Per Platoon Syllabus
1330 hrs.....As Per Platoon Syllabus

3. BLACKOUT
Blackout Precautions will be taken between 2255 hrs. 3-6-42 and 0500 hrs. 4-6-42

4. TRANSFERS AND POSTINGS
The u/m Other rank is transferred from H.Q. M.T. Coy to No.1 Ammunition Platoon and Posted as Cook.
E-14249 Pte. JONCAS G.

5. ILLEGAL SALE OF GIFTS FROM CANADA

1. Attention is directed to Routine Order (Overseas) No.635 and the instruction therein that Officers Commanding will see that appropriate disciplinary action is taken immediately any cases are reported or come to their notice of the sale by personnel of of the Canadian Army of gifts, particularly cigarettes and tobacco which have entered the United Kingdom free of duty.

2. Disciplinary action should be taken promptly in all cases. To facilitate proof and in order that a charge may be laid under Army Act 11 the following special order is made.

3. The sale or any disposal on a commercial or barter basis in the United Kingdom by military personnel to other military personnel or a civilian person or corporation, of any gift or gifts to an Officer or soldier of the Canadian Army or for distribution to the personnel of a unit of the Canadian Army, which have entered, or are commonly known to enter the United Kingdom free of duty, is hereby forbidden. (Auth. F.P. I.O. 152 d/1-6-42)

This is a certified
true extract of the
original Part I Orders

(L.A. Dowling) Capt.,
Officer detailed to take
the summary.

"C"

SUMMARY OF EVIDENCE in the case of E-29396 Pte. Louis Phillipe OUELLET 2 Cdn Div Amn Coy (4 Coy) R.C.A.S.C. A soldier of the Canadian Army Overseas.

The accused is informed of his rights. The O.C. directs that the evidence be taken on oath.

1st WITNESS FOR PROSECUTION. E-14064 Cpl. Imbeault Georges 2 Cdn Div Amn Coy (4 Coy) R.C.A.S.C. sworn states:-

I am Cpl. in charge of the M.P's for the 2 Cdn Div Amn Coy (4 Coy) RCASC. About 1000 hrs. the 22 Jan 43 I received a telephone message from the Chichester Police Station to go and pick up E-29304 Pte. Roy Raoul and E-29396 Pte. Ouellet L.P. When I arrived Detective Sergeant P.J. Heslin told me that the men had been turned over to No. 2 Provost Coy. 2 Cdn Div. I went there and Sgt. Rose of that Coy handed over to me the two accused, Ptes. Roy and Ouellet. He also handed over to me 950 Black Cat cigarettes and 925 British Consol cigarettes which I produce herewith in evidence. He also gave me the following documents which I likewise produce herewith.
(1) Statement by H-17190 Cpl. Hanes W. of No.2 Provost Coy 2 Cdn Div dated 22 Jan 43 concerning the alleged attempted sale of Canadian Tax free cigarettes by E-29304 Pte Roy Raoul and E-29396 Pte. Ouellet L.P. and purporting to contain confessions, of the accused admitting the crime.
(2) A.F's B.252 charging the accused with W.O.A.S. attempting to sell Tax Free Canadian Cigarettes C.A.R.O. 960
He then told me to stop at the Chichester Police Station and pick up further documentary evidence. I did so and herewith produce the following documents.
(a) Statement by Detective Sergeant Patrick Joseph Heslin West Sussex Constabulary dated 22 Jan 43 concerning the attempted sale of Canadian cigarettes.
(b) Statement by Detective Constable Arthur Charles Lewis Evans, West Sussex Constabulary concerning the attempted sale of Canadian cigarettes.
I then returned to my Unit with the two accused and placed them under close arrest about 1530 hrs. the 22 Jan 43
I also produce Daily Part I Order No. 154 dated 3 June 42 forbidding the sale of gifts.

Georges Imbeault
E-14064 Cpl. Imbeault G.

The accused declines to cross-examine the witness.

2nd WITNESS FOR PROSECUTION Detective Sergeant P.J. Heslin West Sussex Constabulary, Chichester.

A type written statement of this witness" evidence purporting to be signed by him has been read to the accused and is included in this summary.
The accused does not demand the attendance of this witness for cross-examination.

(L.A. Dowling) Capt.,
Officer detailed to take the Summary.

3rd. WITNESS FOR PROSECUTION Detective Constable A.C.L. Evans West Sussex Constabulary Chichester.

A type written statement of this witness' evidence purporting to be signed by him has been read to the accused and is included in this summary.
The accused does not demand the attendance of this witness for cross-examination.

(L.A. Dowling) Capt.,
Officer detailed to take the Summary.

4th WITNESS FOR PROSECUTION

H-17190 Cpl. Hakes W. 2 Provost Coy 2 Cdn Div.

A type written statement of this witness' evidence purporting to be signed by him has been read to the accused and is included in the Summary.
The accused does not demand the attendance of this witness for cross-examination.

(L.A. Dowling) Capt.,
Officer detailed to take
the Summary.

5th WITNESS FOR PROSECUTION

B-95453 Sergeant Rose W.C. No.2 Provost Coy 2 Cdn Div

The confession of the accused in the a/m statement signed by Cpl. Hakes W. was made before Sergeant Rose W.C. the sergeant mentioned in the statement of the accused.
The accused does not demand the attendance of Sergeant Rose W.C. for cross-examination.

(L.A. Dowling) Capt.,
Officer detailed to take
the Summary.

The accused E-29396 Pte. Ouellet L.P. having duly cautioned in accordance with R.P.4(E) elected to and did make the following statement under oath.

"Thursday night the 21 Jan 43 Pte. Roy asked me if I wanted to go to Chichester. I said yes, and he asked me if I was willing to carry some cigarettes for him? I said yes that I would carry some for him. We went in the lorries at 1800 hours and got into Chichester at 1830 hrs. We got out of the truck and walked along the side walk. Pte Roy said to me, wait a minute and he went and talked to two civilians. I waited for about a minute and then he called to me. I went and joined joined him. I saw the two men who were with h him. One of the men asked me if I had any cigarettes, I said that I had some. He then told me that they were police and that I was under arrest. Just then a Corporal of the Provost Corps came along and the Police called him. The police and the Corporal then brought Pte. Roy and myself to the police station. At the Police Station I was told to empty my pockets and then they ran their hands over my tunic to see whether I had emptied all my pockets. They asked me if I had any money and I said no. The Cdn Provost then came and took me away at about 2330 hrs. to Bognor Regis. There a Sergeant of the Provost questioned me. He asked me only why I had been brought there. I said that I had been arrested by the civilian police in Chichester because I was carrying cigarettes. The Sergeant said that it was just too bad for me. He asked me if I had a good conduct sheet? I said yes that I had never gone A.W.O.L. He told me that it would be necessary to sleep there. Next morning I was questioned by the Sergeant. He asked me to make a statement I made one, but it being in English I did not understand it very well. He then asked me to sign it and I did so. I then went back to the cell and stayed there until Cpl. Imbeault came and brought me back to my Unit.

L.P. Ouellet

E-29396 Pte. L.P. Ouellet

Certified that R.P.4 complied with
In The Field
23 Jan 43

(L.A. Dowling) Capt.,
Officer detailed to take
the Summary.

CANADIAN PROVOST CORPS

File Reference 3-9-0

Company: No.2 Formation: 2 Cdn Div Corps.

Location: Field Date: 22 Jan 43

SUBJECT: Re: ATTEMPTED SALE OF CANADIAN TAX FREE CIGARETTES
E-29304 Dvr. Roy R.
E-29396 Dvr. Ouellet L.P.
2 Cdn Div Amn Coy (4 Coy) RCASC.

Reference the a/m I have to report that while on duty in Chichester at approx 1920 hrs. 21 Jan 43, I was proceeding along South St. when I heard some loud talking emenating from the doorway of "Charges Drapery Shop". Investigating I discovered Det. Sgt. Heslin, Det. Cst. Evans both of the Chichester Civil Police and two Canadian soldiers Ptes. Roy R. and Ouellet L.P. of 2 Cdn Div Amn Coy I was informed by the civil police that the 2 soldiers had tried to sel sell Cdn. Tax Free cigarettes to them.

I placed the two men under arrest and escorted them to the civil Police Station whereI relieved them of all Cdn. cigarettes in their possession. Roy had in his possession 950 Black Cat (Cdn) cigarettes, and Ouellet had 925 British Consols.

On my return to billets following the completion of my tour of patrol duty I escorted the a/m soldiers to Coy H.Q. where they were placed in the guard room. On the morning of 22 Jan 43 the soldiers were questioned and gave the following voluntary statements:

STATEMENT of E-29304 Dvr ROY R.

"About three weeks ago a carton of 1000 cigarettes, (Black Cat Canadian) came to me at my unit. I was in hospital at the time and on my return to my unit on 21 Jan 43 I received them. I was going in to Chichester on 21 Jan 43 so I opened my carton and put the cigarettes in my tunic and left for Chichester at about 1900 hrs. I tried to sell them to two civilians who were Police Officers. These Officers turned me over to the Military Police. I wanted the money from them to go on leave. I have never sold cigarettes before.

Signed Robert Roy.

STATEMENT of E-29396 Pte. Ouellet L.P.

"I have been away on a course from my unit and arrived back to the Unit on 19 Jan 43. I found a carton of 1000 British Consol cigarettes waiting for me. I opened it and took out one package. On 21 Jan 43 I took out 2 more packages, and at about 1800 hrs when I was going to Chichester I took the rest of the carton which was 37 Packages and put them in my tunic. When we arrived at Chichester I tried to sell them to two civilians who were Police Officers. These Officers handed us over to the Military Police. I needed some money and that was my reason for wanting to sell them. I have never sold my cigarettes before.

Signed L.P. Ouellet.

For your information please.

Signed H-17190 Cpl. Hanes W.
No.2 Provost Coy 2 Cdn Div.

Certified true copy of the original A/Lt. remaining at Officer detailed to take the summary

W. Griffin Major

CID/H

Police Station
Chichester
22.1.43.

Patrick Joseph HESLIN, Detective Sergeant, West Sussex Constabulary, stationed at Chichester - States:-

At about 7.20 p.m. on Thursday the 21st January 1943 I was on patrol in plain slothes, around Chichester, accompanied by D/Con Evans. We reached Charges shop, South street, proceeding South, when suddenly a soldier came up to us both, saying," Do you want to buy any cigarettes two bob a packet" or words to that effect. He went into the doorway of this shop and commenced taking packets of cigarettes from his pockets. He showed me four or five packets of Black Cat. He then called another soldier into the shop doorway, and his chum came up, also taking cigarettes from his pocket. We then told them we were Police Officers and that we intended taking them to the Police Station. At that moment a member of the Canadian Provost was passing and we called him into the shop doorway. At the Police Station, I assisted in the search of one of the men, namely Pte. Roy and found that he had 38 packets of Black Cat 25's cigarettes. This man and the other soldier were detained The property was handed to the Canadian Provost Corporal.

Signed P.J. Heslin

Certified true Copy
of the original

(L.A. Dowling) Capt.,
Officer detailed to take
the Summary.

Major.

WEST SUSSEX CONSTABULARY

CHICHESTER DIVISION

STATEMENT FORM

NAME : Arthur Charles Lewis EVANS

ADDRESS: Police Station Chichester

OCCUPATION: Detective Constable.

At about 7.20 p.m. on Thursday the 21st January 1943 I was on patrol in Chichester with Det. Sgt. Heslin. We had just got outside "Charges" shop in South Street, Chichester when a soldier came up to us and said." Do you want to buy some cigarettes, two bob a packet". He went into a doorway of "Charges" and pulled out four packets of cigarettes, and said "Two bob a packet".

He then called another soldier who was standing just down the road, and this soldier came up and also pulled out some cigarettes, and said to me "Do you want any". I told this soldier, whom I later knew as Pte. OUELLET that we were police officers, and that we would take them to the Chichester Police Station. At that moment a Corporal of the Canadian Provost passed, and he accompanied us and the prisoners to the Police Station. I searched the pockets of Pte. OUELLET and found on his person 37 packets of British Consols. cigarettes.

Signed A.C.L. Evans 217

Certified true copy
of the original

(L.A. Dowling) Capt.,
Officer detailed to take
the Summary.

STATEMENT OF CHARACTER
(Substitute for form A.F.B.355)

In The Field
23 Jan 43

E-29396 Pte. OUELLET L.P.
2 Cdn Div Amn Coy (4 Coy)
R.C.A.S.C.

Age: 22

Marital State: single

Dependents: none

Date of Enlistment: 18 Sep 40

Length of time in Custody from time of arrest until date of trial:- 21 to 29 Jan 43

Army Record (see M.F.M.6)

General Character Good

Appointments and Promotions etc. —

for (A.H. Houde) Lieut/Adj.,
for O.C. 2 Cdn Div Amn Coy.,
(4 Coy) R.C.A.S.C.

M.F.M. 6
A.F.B. 177
175M—7-41 (1219-20)
H.Q. 1777-39-1652

E29396 Name OUELLET L.P. Sqn., Battery, or Company 2 Cdn Div Amn Coy Corps RCASC Date of enlistment 18 Sep 40 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. 3 Signature O.C. Company, etc. L Gregoire Character Lt.

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 Jul41	Pte.		A.A. Sec.15(1) Failed to appear at the place of Parade	L/Cpl.Brochu Cpl.Paradis	7 Days Pay 7 hrs. Extra drill	15 July 41	Maj. P.H. Savard.	Forf. 7 Days Pay FR&I 149 (2)
On 18 Sep 42 This soldier completed 2 years service and in accordance with R.O.71 CASF Overseas the above entry was transferred from previous sheet (2) which was destroyed 18 Sep 42.									
Field	18 Nov 42	Pte.		A.A. Sec 40 Conduct to the prejudice etc. In that he was found handling coal in a Military vehicle without proper authority	Lt. A.H. Houde.	7 Days C.B. 7 Days Pay.	19 Nov42	Major P.H. Savard	Forf 7 Days Pay FR&I 149 (2)

Certified true copy of the Original

[signature] ADJT.

2CDN. DIV. AMN. COY. (4COY.) R.C.A.S.C.

[signature] Major

(P.T.O.)

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 twenty ninth day of Jan 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)~~ Mcu.

were duly sworn.

* Omit if not applicable.

Signed this twenty ninth day of Jan, 1943

M Clapper 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.~~ Mcu

~~Signed this day of~~ Mcu.

~~*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 day of 19 .

Confirming Officer.

Promulgated and extracts taken in the case of E29396 Pte Louis Philippe Ouellet

(a) (Dated) 2 Feb/43 (Signed) R de Bruyn Capt 4 Can Inf Bde Coy R Case

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. 748/2

AA-60

SPR OUELLETTE L.L.

DD-60

Correspondence to be PINNED here.

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 21st day of April, 19 43

Whereas it appears to me, the undersigned, an officer in Command of 1st Cdn Army Troops Engineers, 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~~ :—

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

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

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

Proceedings Reviewed

Reviewing Officer

for 12 May 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	G. A. McClintock	R.C.E. 5 Cdn. Const Coy.

Members.

Rank.	Name.	Regiment.
Lieut	H. Formby	RCE - 2 Bn RCE
Capt.	E. M. ~~Van~~ Kougbaet	RCE - 4 Bn RCE
2 Lieuts	~~WAITING~~ MEMBERS (or MEMBERS UNDER Post) appointed by C.O.	3 Bn R.C.E.

*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]

Commanding R.C.E. ~~Dept~~ Cdn Army ~~Troops~~ 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)
D15709 Spr Ouellette L.L. 3 Bn. R.C.E.	First Charge A.A. 40 Conduct to the prejudice of good order and Military Discipline	Not Guilty	Guilty	I confirm the findings and sentence of the court.
	Second Charge A.A. 19. Drunkenness.	Guilty	Guilty	[signature] C.R.E. Cdn. Army Tps. 27 Apr 43
	Third Charge Conduct to the prejudice of good order and Military Discipline.	Not guilty	Not guilty Ninety days detention [signature] 24 Apr 43	

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (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) [signature] (Signed) [signature] Capt RCE
Commanding 1st Cdn Army Tps RCE. 5th CCC R.C.E.
Convening Officer (a) 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 24th day of April 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)
5. The Short hand writer

were duly sworn.

Signed this 24 day of April 1943.

[signature] RCE
President of the Court Martial.

* Omit if not applicable.

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 19~~

~~President of the Court Martial.~~

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

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 27 day of April 1943

[signature] Col.,
C.R.E. Cdn. Army Tps
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 D15709 Spr Ouellette L.L. 3 Bn. R.C.E.

(a) (Dated) 28 Apr 43 (Signed) [signature]

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.

Wt. 47797/1937 35 M. 5/41 KJL/3265(2) Gp. 698/3

CHARGE SHEET

The accused D-15704, Spr. OUELLETTE, L.L., 3rd Bn. R.C.E., a soldier of the Canadian Army Overseas placed on Active Service, is charged with:-

FIRST CHARGE: CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,
Sec.40
A.A.

In that he
in the Field, on 30 March 43, at about 2030 hrs. so negligently handled a rifle that he did wound E-28434 Spr. VERRET E.

SECOND CHARGE: D R U N K E N N E S S
Sec.19
A.A.

in that he
in the Field, on 30 March 43, at about 2030 hrs, was drunk.

THIRD CHARGE: CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,
Sec.40
A.A.

in that he
in the Field, on 30 March 43, at about 2030 hrs. pointed a loaded rifle at D-15795, Spr.LALUMIERE J.A.

Geo W Smith

(Geo.W.Smith)-Lt.Col.,
Commanding Officer,
3rd Bn.R.C.E. CA (O)

To be tried by Field General Court Martial.

C.R.E. Cdn. Army Tps.

MEDICAL OFFICER'S CERTIFICATE

K.R.(CAN) PARA 557

I certify that I have this morning examined No. [illegible] Spr. Ouellette L.P. of 3rd Bn R.C.E. and in my opinion he is fit to undergo Trial by Court Martial.

Station In the field

Date 24-4-43

[illegible]

[illegible] Capt

Medical Officer

PAGE 1

Accused D15704 Spr. Lucien Lionel Ouellette 3 Bn RCE.
(Number) (Rank) (Christian Names) (Surname) (Unit)

Held in the Field in England on 24 Apr. 43
(Country) (Date)

	Rank	Name	Unit
PRESIDENT:	Major	G.A. McClintock.	5 CC Coy RCE.
MEMBERS:	Capt.	E. Van Longhuet	4 Bn RCE
	Lieut	N. Formby	2 Bn RCE.
JUDGE ADVOCATE: (If any)	none.		
OFFICERS UNDER INSTRUCTION:	Lieut.	F. Donegan	3 Bn RCE.
	Lieut	G. Pokorny	3 Bn RCE

PROSECUTING OFFICER: Lieut L.P. Belanger Lawyer? Ans no

DEFENDING OFFICER: Lieut M.M. Dixon Lawyer? Ans no

(The following procedure must be actually carried out)

The President produced the Convening Order, Charge Sheet(s) and Summary of Evidence. (Rs P 17(B), 22(A)).

The President, in closed court (R.P.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 (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 1040 hours, the trial commences.

The Prosecuting Officer produces a Medical Certificate under K.R. (Can)557 (See CHH. 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 Lieut F. Donegan as interpreter? Ans no

The interpreter is duly sworn.

Do you object to Cpl. J. Leblanc as shorthand writer? no

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 (R.P.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 (R.P.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 (A.A.46(6))

(If special plea/s is/are made for separate trial on one or more charges (R.P 62(1), 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. 1.0, R.P.57), record each plea 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 (R.P.112). He pleads as follows:

First Charge	not guilty	Fifth Charge	
Second Charge	guilty	Sixth Charge	
Third Charge	not guilty	Seventh Charge	N/a
Fourth Charge	N/a	Eighth Charge	

(For procedure on alternative charges, see R.P. 37, (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)

1. R.P.35(B) is complied with, in respect to 'Guilty' pleas, by the President ascertaining that 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 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 R.P. 40 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(B)(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 witness in your defence? Ans No
Q. Is he a witness as to character only? (R.P. 40C(B) Ans N/A

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 Rs P.40, 41 and 42)

9. The Court is now closed to consider the findings. (Rs P 43 and 117) (Record Finding on Page 2 of A.F.A.3)

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).

PAGE 'C' CONTINUED

14. President to accused:
Q. Do you wish to make any statement in mitigation of punishment? (R.P.37(C)) Ans Yes
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? (R.P.37(C)) Ans No since Yes

(Such evidence, confined to character only, is recorded on separate sheet, initialled by the President and attached hereto)

16. Statement of Character and Service (A.F.B.396) and Field Conduct Sheet (M.F.M.6), signed in the manner required by A.A.163(1)(n) 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. (R.P.46; Overseas R.O.3131)

17. President to accused:

Q. Do you wish to address the Court on the Statements of Character, Service and Conduct and in mitigation of punishment? (R.P.46(D).
Ans No No cross-examination.

(Record address (if any) on separate sheet, initialled by the President and attached hereto)

18. The Court is not closed to consider the sentence. (Record on Page 2 of A.F.A.3)

(Punishments, A.A.44; K.R(Can)563 - 566; one sentence only awarded, R.P.48. Sentence should be dated)

The sentence is not announced to the accused by the Court.

[signature]
(Signature of President)
24 April 1943

1st Witness: E-28434, Spr. VERRET E., 3rd Bn.R.C.E. "C" Coy. having been duly sworn, states:-

Le soir que c'est arrive, l'heure a peu pres, je ne sais au juste, c'est arrive vers huit heures et demie. Spr. Ouellette et spr. Lalumiere sont rentres tous les deux dans la chambre et paraissaient etre bien chaud tous les deux; moi j'etais assis en avant du foyer et puis quand ils sont entres, je me suis mis a causer avec eux, puis un moment donne, le spr. Ouellette a dit: "Nous avons un scheme a soir puis j'y va pas" il dit au spr. Lalumiere: "je vais mettre ma bayonnette apres ma carabine" Spr. Lalumiere voulait pas qu'il fasse ca, seulement qu'il l'a fait quand meme. Spr. Lalumiere lui a dit: "tu vas enleve ta bayonnette" finalle-ment il dit: "tres bien je va l'enleve" et il l'a enleve. Sur l'entre fait je me su'a leve pour prendre un morceau de bois pour mettre dans le foyer et la je me suis apercu qu'il avait baisse sa carabine et puis il etait apres mettre une balle dedans. La je lui ai dit: "enleve cette cartouche la de dedans parceque ca peut etre dangereux, s'il t'arrivait un accident avec ca qu'est-ce que tu ferais? parce que ca peut etre grave pour toi si il t'arrive un accident". C'est la que Lalumiere a saute dessus pour enlever la balle qu'il avait dans sa carabine, puis la carabine se promenait sur tous les bords, et le canon etait en bas, la, quand j'ai vu qu'il etait pour avoir du danger, je me suis glisse sur le bord de la porte pour pouvoir sortir de la chambre, c'est la que le coup a parti, la balle est entree dans ma jambe. Quand Ouellette a realise que j'avais ete frappe, la il a pris une corde qu'on avait dans la chambre pour me serrer la cuisse pour arreter le sang. C'est tout.

Q.1. Do you wish to question this witness?

A.1. Yes sir.

Q.2. Depuis combien de temps vous connaissez spr. Ouellette?

A.2. Depuis le mois de decembre, depuis mon transfert au 3e Bataillon.

Q.3. Depuis environ 3 mois?

A.3. Yes sir.

Q.4 Depuis que vous connaissez l'accuse, quelle opinion avez vous de lui comme homme, compagnon, etc..?

A.4. Nous nous sommes toujours bien accordes.

Q.5. Autrement dit, spr. Ouellette ne vous en voulait pas?

A.5. No sir.

Q.6. Quand le spr. Ouellette est entre, etait-il bien sous l'influence de la boisson?

A.6. Oui monsieur, il etait bien chaud.

Q.7. Croyez-vous que le spr. Ouellette savait ce qu'il faisait?

A.7. Je ne crois pas, il avait pas l'air qu'il agissait.

Q.8. Qui est spr. Ouellette ici dans la chambre?

A.8. Lui ici. (Le temoin pointe l'accuse.)

Q.9. Est-ce lui qui a tire le coup?

A.9. Je ne puis dire parce que la carabine se promenait, mais je ne puis assure qui a tire le coup.

NOTE:- RULE 83b HAS BEEN COMPLIED WITH.

2nd Witness: D-15795, Spr. LALUMIERE J.A., "C" Coy., 3rd Bn.R.C.E., having been duly sworn, states:-

J'ai sorti le 30 au soir avec le spr Ouellette vers six heures moins quart et nous sommes alles au pub. On a bu de la biere jusqu'a sept heures et demie.a peu pres. Ensuite on est retourne au camp, on a rentre dans la hutte et le spr. Verret se chauffait pres du feu. Spr. Ouellette en passant a cote de son lit a pris une carabine, il a pris une balle dans sa poche et il l'a mis dans sa carabine ensuite il a pointe sa carabine vers nous autres et il a dit: " je va tire". A l'instant meme je me suis avance, j'ai saisi la carabine et le spr. Verret s'est enfui vers la porte et a l'instant meme le coup a parti et le spr Verret m'a dit: "va chercher le docteur". C'est a peu pres toute ca.

Q.10. Est-ce que vous vous rappelle comment vous avez saisi la carabine?

A.10. Je ne me souviens pas bien, je sais que je l'ai saisi par le bout.

NOTE: A rifle is produced

Q.11. Spr. Lalumiere, montrez donc la maniere que vous avez saisi la carabine.

A.11. Comme ca a peu pres.

Q.12. Mettez donc la carabine dans les mains du easporal comme spr. Ouellette la tenait.

NOTE: Spr. Lalumiere demonstrate to the court how the rifle was held by spr. Ouellette.

Q.13. Was the rifle pointed at sprl Lalumiere at the time you interfered?

A.13. No sir.

Q.14. Dans quel etat etait le spr. Ouellette quand il est parti du Pub?

A.14. Il etait en etat de boisson.

Q.15. Autrement dit il etait bien en boisson?

A.15. Spr. Ouellette a ete malade en s'en revenant.

Q.16. Est-ce que vous pouvez indique spt. Ouellette ici dans la cour?

A.16. Certainement que je le vois.

Q.17. Estece que le spr. Ouellette est un homme qui cherche la chicane?

A.17. Non monsieur, pas a ma connaissance.

~~2x12~~. NOTE: RULE 83b HAS BEEN COMPLIED WITH.

Same

3rd Witness: D-16709 Cpl. CHAPLEAU J.B. "C" Coy., 3rd Bn., R.C.E. having been duly sworn stated:-

I was orderly Cpl. that day of the 30th. Spr. Roussell came to get me at the show, and I went to the room No.5, to Spr. Verret, and I find Spr. Verret laying down on his bed and Spr. Ouellette was standing besides him and same he was giving first a'd to Spr. Verret. I saw Spr. ~~Verret~~ Ouellette was starting to be pale, and I tell him I was to change place with him. In the teetime Spr. Viau came in the room and Spr. Ouellette fainted there, and I said to Spr. Viau take my place in lookin g after Spr Verret, and I put Spr. Ouellette on a bed and I brought him to. After that I took Spr. Ouellette in another room and he fainted again and I put him in bed. Then I put two guards at Spr. Ouellette and I went back to Spr. Verret to look how things were getting along. The Sgt. M.O. came in and carried on with the rest. I went to Spr. Ouellette bed, I found the empty cartridge on the floor and I took his rifle and found out that this rifle had just been shot, and L'eut. Dowden was there when I looked at the rifle. Spr. same Bourassa and Spr. Mc Grath were on guard and they brought the accused to the toilet. Spr. Bourassa gave me two rounds, I don't know ~~xxxxxx~~ wether they were revolver or tommy gun, he gave me those bullets, and I gave those cartridges to Lt. Dowden after that I went back to the room to see Spr. Ouellette and he was all right. I put him under close arrest. I went back to Spr. Verret and helped the M.O. That is all.

Q.18. Do you recognise Spr. Ouellette?

A.18. Yes Sir.

Q.19. Where is he?

A.19. On my right.

Q.20. Was the accused drunk when you talked to him?

A.20. Il etait en boisson, mais pas en exces.

Q.21. You mean, he understood what he was doing?

A.21. Yes Sir.

Q.22. Have you known Spr. Ouellette for a length of time? Was he in your section? Did you have any trouble with him?

A.22. No. Sir. Never knew him to make trouble, sober he was a very nice fellow, when he drinks he is ~~xx~~talkative.

Q.23. Did you see the wound in Spr. Verrets leg?

A.23 Yes Sir.

Q.24. How would you say it went in?

A.24 From the side sir.

Q.25. These bullets ~~you~~ given were same were not rifle?

A.25 No Sir.

Q.26. Have you got the empty and the rifle?

A.26. They were given to Lt. Dowden.

NOTE:- RULE 83 b HAS BEEN COMPLIED WITH.

same

4th Witness: Lieut. A.E. DOWDEN., "C" Coy., 3rd Bn., R.C.E. having been duly sworn states:-

I was Orderly Officer at "C" Coy., at the night of the accident, I believe it was the 28th of March, anyway it was a pay night. I was in the Knights of Columbus Hut looking after the moving picture show at about 2000 hrs Spr. Roussell N. came in to the hut to tell me that I was wanted id the building as there had been an accident. I told Cpl. Chapleau, who was my Orderly Cpl. sitting beside me, to come with me, and we immediately went upstairs to the room where the accident had taken place. I saw Spr Verret laying on his bed with a wound in his left leg. I told Cpl. Chapleau to take charge and apply first aid, and went immediately by jeep to Burstow park for our Medical Orderly whom I sent to give first aid to Spr. Verret. I then communicated with the Bn. Orderly Officer who said he would arrange for the Dr. and an ambulance, and returned to Courtland House. I saw two rifles in the room and on smelling one of them I investigated further with Cpl. Chapleau and L/Cpl. Labre to satisfy myself that this rifle had been shot recently.

Q.27. Have you got this rifle here?

A. 27. The rifle and empty case were given to the President of the Court of Inquiry. The empty case and rifle were given to me by Cpl. Chapleau.

Q.28. Was the accused drunk when you saw him?

A.28. When I first went into the room I did not notice the accused or his condition. I cannot say Sir.

Q.29. Have you ever had any trouble with Spr. Ouellette?

A.29. Spr. Ouellette has always been a satisfactory soldier.

Lieut. DOWDEN Continuing with evidence states:-
On my return to Courtland, I conducted investigation as to what had taken place, questioning Spr. Lalumiere and asked Cpl. Chapleau what he had determined, Spr. Ouellette was laying on a bed in the next room and in view of this investigation I placed him under close arrest. Later Cpl. Chapleau turned over two bullets to me, saying that he received them from the guard.

Q.30. What kind of bullets were they?

A.30. Pistol bullets.

Q.31. Were they .38.

A.31. Major Milnes has them. I am not sure of what calibre they are.

Q.32. Cpl. Chapleau told you that these bullets were given to you by the guard, can you say who the guard was?

A.32 Yes Sir, Spr. Mc Grath.

NOTE: RULE 87 b HAS BEEN COMPLIED WITH.

Court adjourned at 1245 hrs to reopen at 1400 hrs.

Court re-opened at 1420 hrs

D-15704 Spr. OUELLETTE L.

Q.33. Do you intend to call any other witness for your defence?

A.33. No Sir. Not that I know of.

The accused elects to make an unsworn statement, statement as follows:-

I am D-15704 Spr. OUELLETTE L. from "C" Coy., 3rd Bn., R.C.E. I went out to the pub with Spr. Lalumiere and Spr. LeBlanc M. on that pay day and we started drinking beer, it was after supper. We drank beer till about, I can't state the right time, it was after eight anyhow. Then we left the pub to go back to the camp, and I took sick when on my way. I don't remember how I got to the camp, if I ever got there, next thing I hear, I hear a shot and I had a rifle in my hands. After I heard that shot I seemed to sober up then I know which way the gun was pointed, it was pointed at Spr. Verret. I seen some blood coming from his trousers, then I tried to help him over his bed and give him first aid. I remember grabbing a cloth line hanging in the room to stop the blood. He was saying all the time to take his boot off. I seen it was bleeding too much, I tied that line around his leg to stop the blood I bind it up with a piece of wood and then somebody came along, I don't know who, and he told me to stay away that he'll take care of him. And then I went away and must of fainted or passed out. The next I found out there was two guys along side of me, I was in another room, and then they must of changed me in another room. Then Cpl. Chapleau came to me, told me what had happened and put me close arrest. That is all.

Statement of Prosecutor:-

The Defence is trying to prove that Spr. Ouellette was so drunk the night of the accident, that he does not remember or is not responsible for anything that happened while he was in such a state. Article 555 K R Can. states that drunkenness is not excuse for any offence committed in such conditions.

NOTE: Lieut. DOWDEN is called to identify the rifle and bullet.

Q.34. Mr Dowden, can you identify this rifle?

A.34. Yes Sir. That is the rifle I checked the night of the accident.

Q.35. Who is the owner?

A.35. Spr. Ouellette, I checked with the Q.M.

Q.36. Is that the rifle that shot the bullet?

A.36. That is the rifle that I smelled and passed the pull through the night of the accident.

Q.37. Do you know the bayonet?

A.37. No Sir.

Q.38. How about the empty shell?

A.38. I gave the empty shell to the President of the Court of Inquiry.

Q.39. Could you please identify yourself?

A.39. I am Lieut. A.E. Dowden, from "C" Coy., 3rd Bn., R.C.E.

NOTE: RULE 87 b HAS BEEN COMPLIED WITH.

Statement of the Defence:-

I should like to take these three charges in reverse order. Third charge, states that in the Field, on the 30th March 47., at about 2030 hrs, the accused pointed a loaded rifle at D-15795 Spr. Lalumire J.A. I should like to point out that no evidence have been brought forward to prove that this statement is correct and that Spr. Lalumiere himself denied it. The first charge states, that on the 30th March 47, at about 2030 hrs Spr. Ouellette L. so negligently handled a rifle that he did wound E-28474 Spr. Verret E. The first charge I take to be based on the fact that Spr. Ouellette knowing what he was doing, handled a rifle negligently. This, I think I have proven, is not so. Both witnesses, who were with Spr. Ouellette before the accident, stated that at that time he was very drunk. As the prosecuting officer had said and as stated in the Manual of Military Law, chapter 7 Sec. 48, it is a principle of English Law that drunkenness is not excuse for crime; but, drunkeness may justify a Court Martial in awarding a less punishment than the offence would, otherwise, have deserved. It is also stated in the Manual of Military Law, Chapter 7, Para. 9, that evidence of drunkenness, which rendered the accused incapable of forming the specific intent essential to constitute a crime, must be taken in consideration together with the other facts proved in order to determine whether or not he had that intention. Mr President, I think that most of the members of the Forces who are not teetotalers have, at one time or another, been on what is generally known as an awful toot that can quiet easily result in the brain becoming so be fogged, that they have no sane idea of what they are doing, or any remembrance of it afterwards. I think that any M.O. will back me up when I say that, contrary to popular opinion, alcohol, like codeine is a depressant and not a stimulant, and can ot have this effect. The point I am trying to prove is that the accused was not only drunk, but so drunk that he had no idea of what he was doing until after the shot was fired. The effect of this shot be like that of a cold shower tending to bring him to his senses. The decision Mr. President rests with you, but, if you find him guilty, I feel that he is found guilty of something he knew nothing about. To bear out the statement, I should like to remind the court that both Spr Lalumiere and Spr. Verret were and still are on friendly terms with the accused.

NOTE: The Court adjourned at 1535 hrs.

The Court re-opened at 1555 hrs.

NOTE: The President informed the accused that he has dismissed the third charge.

Q.40. Do you wish to make any statement in mitigation of punishment?

A.40. Only that it is his first offence of drunkenness.

Q.41. Do you wish to give evidence yourself, or call witnesses as for character?

A.41 I wish to call witnesses.

NOTE: Cpl. Chapleau is called in as character witness of the accused.

Q.42. Cpl. Chapleau, you are called in as character witness only, in the case of the accused, would you make a statement.

A.42. It is a good character.

Q.43. Good soldier?

A.43. Yes Sir.

Q-44. Does he know his work?

A,44. Yes Sir.

Q.45. How does Spr. Ouellette get along with his other companions?

A.45 As far as I know he is doing very well with the others.

SUMMARY OF EVIDENCE

in the case of

No.D-15704, Sapper, OUELLETTE L.L., 3rd Bn.R.C.E., a soldier of the Canadian Army Overseas placed on active service.

Charges:-

1. Conduct to the prejudice of good order and military discipline.

2. Drunkenness.

3. Conduct to the prejudice of good order and military discipline.

First Witness: D-15795 Spr. LALUMIERE, J.A., 3rd Bn.R.C.E., C.A.(O). states:-

The night of the accident, I and Spr. Leblanc and D-15704, Spr. Ouellette, L., left the billets around 1745 hrs. and went to a local pub, arriving there about 1800 hrs. We stayed there untill about 1930 hrs drinking beer all the time. We left and D-15704, Spr. Ouellette L. appeared intoxicated and was sick on the way home. I went into the same room as D-15704 Spr. Ouellette, L. and saw E-28434, Spr. Verret E. in the room by the fire. There were only the three of us in the room at the time. I saw D-15704, Spr. Ouellette, L., pick up his rifle and take a cartridge out of his pocket and put it into the chamber. After that he said: "I will fire". The rifle was pointed in the general direction of E-28434, Spr. Verret, E. and myself. He was about three or four feet away at the time. E-28434,Spr.Verret E. started to leave and I went to D-15704, Spr. Ouellette L. and knocked his rifle to one side. As I knocked the rifle down to the left, it discharged just as E-28434, Spr. Verret E. was passing. I then noticed E-28434, spr. Verret E. was wounded in the leg and I left immediately to find the doctor.

The accused declined to cross-examine.

D15795 Lalumiere JA Spr

(D-15795,Lalumiere,J.A.)-Spr.

nd. Witness: D-16709 Cpl. CHAPLEAU J.B. 3rd Bn., R.C.E. CA (O)

States: I was orderly Cpl. for "C" Coy the 29th March 43, I went to the movies in the camp in between my duties. G-51190 Spr. Roussell M came and got me around 2015 hrs Spr. Verret had been shot in the leg.

I went right away and found E-28434 Spr. Verret E. lying on his bed and D-15704 Spr. Ouellette L. and D-15795 Spr. Lalumiere J.A. were in the room with him. D-15704 Spr. Ouellette L was administering first aid. D-15704 Spr. Ouellette L fainted and I put him on a bed, and brought him to. D-56742 Spr. Viau P.E. took care of E-28434 Spr. Verret E. in the mean time. After this I conducted D-15704 Spr. Ouellette L to another room where he fainted again. Both Sprs D-15795 LalumiereJ.A. and D-15704 Ouellette L. appeared to be under the influance of alchol but nto incapacitated. I put a guard on D-15704 Spr. Ouellette L and after he came to, placed him under close arrest.

In room No.5. I found a expended cartridge case near D-15704 Spr. Ouellette L. bed, and on examination of hisrifle it appeared to have been fired recently.

The accused decline to cross-examine.

C.E. Chapleau J.B. .....
(D-16709 Chapleau J.B.) Cpl.

Third Witness: Lieut. A.E.DOWDEN, 3rd Bn., R.C.E., C.A. (O) States:-

I was Coy. Orderly Officer on the 29th of March 43, at approximately 2010 hrs, I was in the Auxiliary Services Hut with Cpl. Chapleau J.B. my Cpl. At this time, I was summoned into the main building by G-51190 Spr.Roussell M., who said that a man had been shot. I immediately went with D-16709 Cpl. Chapleau J.B. and found E-28434 Spr.Verret E lying on his bed with a wound in his left leg. I told D-16709 Cpl. Chapleau J.B. to give first aid while I went to look for the Medical Officer. I later returned and found E-28434 Spr. Verret E had been taken care of by the medical orderly. D-15704 Spr. Ouellette L. was in the next room under guard and I had him placed under arrest. I conducted an investigation as to the circumstances that surrounded the accident and interviewed D-15795 Spr. Lalumiere J.A. I pick up rifle Y-95259, and ~~found~~ with D-16709 Cpl. Chapleau J.B. I determined it had been fired recently by the odour of the barrel and by pulling it through.

Teh accuse decline to cross-examine.

A.E. Dowden ...
(A.E. Dowden) Lieut.

Fourth Witness: E-28434, Spr. VERRET, E., 3rd Bn., R.C.E., C.A.(O). states:-

At about 2000 hrs., 29th of March 1943, D-15704, spr. Ouellette and D-15795 spr. Lalumiere, J.A. came into the same room as I was. I think they were both intoxicated. We started to talk and I went to build up a fire. D-15704 spr. Ouellette L took his rifle and put his bayonet on. D-15795, spr. Lalumiere took the bayonet off the rifle by force and put it in it's scabbard. Then D-15704, spr. Ouellette took his rifle and put a cartridge in it. I told him to take it out as it was dangerous. D-15795, spr. Lalumiere J.A. attempted to take the rifle from D-15704 spr. Ouellette, L. and in the struggle the rifle was knocked down to one side towards me and it discharged hitting me. in the leg. D-15704, spr. Ouellette immediately gave me first aid.

The accused declined to cross-examine.

Spr Emile Verret
(E-28434, E.Verret)-Spr.

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.-

On last pay day, 29th March 43, I went down to a local pub with D-15795, spr. Lalumiere, J.A., and spr. Leblanc, A. of "C" Coy., I stayed there around two hours and was drinking beer all the time I was there. I returned home right after, but I do not remember the exact hour. I do not remember coming home and if I was accompanied or not and I think I was intoxicated at the time.

When I entered my room, I remember who was in the room with me when I entered. I heard a shot, but I do not remember firing it. I immediately looked in the direction in the rifle was pointing. I saw E-28434 spr. Verret E., and noticed he was trying to move his leg. I saw blood running from his trousers. I assisted him to his bed and rendered first aid.

Lionel Ouellette
(D-15704, Ouellette L.L.)-Spr.

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 in the Field this 19th day of April 1943.

A. Content Lieut

(A. Content)-Lieut.
3rd Bn.R.C.E. CA (C).

Exhibit A.

M.F.H. 888
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D-15704,	Sapper	OUELLETTE L.L.	3rd Bn. RCE, (CA) Ø.

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, 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	Disobeying a lawful command	times	Disobeying a lawful command	1 times
For	A.W.L.	1 times	A.W.L.	1 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,

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 19 days in military custody, making a total of 19 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his attestation paper is 21 years 10 months.

6. The date of attestation specified in his attestation paper 10 July 1941

7.

8.

9. The accused is in possession of or entitled to no military decoration, military reward

10.

E A M C

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 Air Force 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 19th day of April 43.

Adjudant 3rd Bn. RCE (CA) O.

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 B.

No. D-1570 Name OUELLETTE L. | Sqn., Battery, or Company | Corps RCE | Date of enlistment 10-7-41 | G.C. Badges | Service or Proficiency Pay N. A. | Character

M.F.M. 6 (A.F.B. 122) 500M—11-40 (3023) H.Q. 1772-45-18

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. 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
				Sheet No. destroyed 10-1-42 No entry, six months service.					
Petawawa	21-4-42	Spr.		Refuded an order from his superior officer and refused to work.	L/S.Levesque 5 d.C.B. L/C.Rivard. 5 Hrs.Ex.Drill		21-4-42	L.M.Nantel Major	
Field	17-12-42	Spr.		A.A.Sec.15(1) W.C.A.S. A.W.L. in that he, in the field, AWL from 2359 17-12-42 till 2200 hrs 18-12-42. Absent 22 hrs.1 min.	Sgt.Miller L/C.Meunier	1 day forf. of pay,	21-12-42	G.J.Cote Major	Auto.Forf. 1 day.FR & I Tot.Forf. 2 days pay.

CERTIFY TRUE COPY of the Regimental Books in my Custody

Gaetan J. Cote

(Gaetan J. Cote)-Major

O.C. "C" Coy., 3rd Bn. RCE

(P.T.O.)

90a. 10-0-74

E. 4593 Pte Ouellette, L.P. (1st case)

2 Cdn. Inf. H. U.

See 156D for 2nd case

107I " 3rd "

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 31st 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;

* 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.

ENTERED IN RECORDS OF C.M.

President.

Rank.	Name.	Regiment.
Major	R.W. Lent	Lorne Scots

Members.

Rank.	Name.	Regiment.
Captain	F.H. Clarke	No.1 Cdn Arty Hldg Unit
Lieutenant	H.D.C. Crooks	No.1 Cdn Arty Hldg Unit
Lieutenant	G.H. Hall	No.1 Cdn Sigs Hldg 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 L. F. Page Brigadier

Commanding Canadian Base Units, Cdn Army
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*)
E-4593 PTE. OUELLETTE, L.J. (R 22e R reinforcement) No.2 Cdn Inf Hldg Unit.	First Charge A.A. Sec.15 (1) as per charge sheet Second Charge A.A. Sec.24 (2) as per charge sheet	Guilty Guilty	Guilty Guilty SENTENCE TO UNDERGO DETENTION FOR A PERIOD OF SIXTY DAYS AND TO BE PUT UNDER STOPPAGE OF PAY UNTIL HE HAS MADE UP THE SUM OF £5. 13. 6¢ IN RESPECT OF LOSS OF KIT BY NEGLIGENCE. Confirmed L	C

* 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) L. F. Page Brigadier (Signed) Rowland major
Commanding Canadian Base Units, Cdn Army *Convening Officer* (*c*) Time Date. *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 Fourth day of March/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~~) Stenographer Roth
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 4th day of March 1941.

[redacted] 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 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 7th day of March 19 41.

L. F. Page. Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of E4593 Pte Ouellette L.

(*a*) (Dated) 11 Mar 41 (Signed) [redacted]
Lieut. Col.
Officer Commanding,
No. 2 Cdn. Inf. Holding Unit
C.A.M.C.

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.

(43758) Wt. 40139-4M. 300. 1/40 P. St. 6,500

CHARGE SHEET

The accused No. E4593 Private Louis Philippe Ouellette, on the strength of No. 2 Canadian Infantry Holding Unit, as a reinforcement for his regiment, 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,

at Camp 102, Witley, Surrey, at 2200 hrs 5th January 1941, absented himself without leave until apprehended by Canadian Provost Corps in London at about 1415 hours, 30th January 1941. (Total absence, 25 days)

Second Charge
Sec. 24 (2)
Army Act

Losing by neglect his equipment, clothing, and regimental necessaries,

in that he,

at Camp 102, Witley, Surrey, on 19th February, 1941, was deficient of : 1 battle dress blouse, £1, 2s 6d; 1 pair battle dress trousers, £1, 0s, 6d; 1 pair ankle boots, £1,2s,6d; 1 boot blacking brush, 8½d; 1 cap comforter, 1s, 3d; 1 pair woolen drawers, 6s, 3d; 1 clasp knife, 3s, 4d; 1 lanyard, 1½d; 1 woolen vest, 6s,6d; 1 pair socks, 1s, 11d; 1 haversack, 10s, 7½d 1 pack, 12s, 5½d; 1 shoulder strap, 4s, 0½d; 1 oil bottle, 7d; 1 pull through, 3d; total value £5-13-6 3/4.

P.E. Belanger

(P.E. Belanger) Major
Commanding
No. 2 Cdn. Inf. Holding Unit

Camp 102
Witley Surrey
22nd February 1941

To be tried by Field General Court Martial

Bordon, Hants
This 3rd day of March 41.

.....Brigadier
Commanding Cdn Base Units.

E 4593 Pte. Ouellette, L. ..., No. 2 Cdn Infantry Holding Unit, tried by Field General Court Martial, at Whitley, on the 4th of March, 1941.

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

Prosecutor: Lieut. G. A. Addy.
Defending Officer: Lieut. L. J. Pronger.

At 1000 hours the trial commences.

The names of the Presient and members of the Court are read over in the hearing of the accused and they severally answer totheir 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 B 88281 Sgt. James Lonergan, Royal Canadian Artillery, 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.

Q3 - Are you guilty or not guilty of the first charge in the above-mentioned charge sheet, which you have heard read?
A3 - Guilty, sir.
Q4 - Are you guilty or not guilty of the second charge in the above-mentioned charge sheet, which you have heard read?
A4 - Guilty, sir.

R.P. 35(B) is complied with.

The Prosecutor is then sworn.

Q5 - Have you any evidence to produce as to the character and particulars of service of the accused?
A5 - Yes, sir. I produce A.F.B. 296 and certified copy of M.F.M. 6 of the accused.
Q6 - Is the accused the person named in the statement which you have read?
A6 - Yes, sir.
Q7 - Have you compared the contents of the above statement with the regimental books?
A7 - Yes, sir.
Q8 - 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?
A8 - Yes, sir.
The accused declines to cross-examine.

President: You have the right to give evidence or make a statement.

Defending Officer: The accused has nothing to say, sir.

The Court was closed for consideration of the sentence.

SUMMARY OF EVIDENCE

in the case of

No. E 4593 Private Louis Philippe O„ellette, on the strength of No. 2 Canadian Infantry Holding Unit as a reinforcement for his regiment, a soldier of the Canadian Army (Overseas)

Evidence taken on oath by order of the Commanding Officer:

First Witness Prosecution Lieut. I.H. MacIntosh, being duly sworn, states:

I am Acting Records Officer of No. 2 Canadian Infantry Holding Unit. I produce herewith:

(a) Declaration of Court of Inquiry, 28-1-41

(b) A F B 252, 30-1-41

These concern the accused, whom I recognize.

. . . . . .Lieut

Accused declines to cross-examine this witness.

Second Witness Prosecution E17009 C.S.M.S. Gagne, F, being duly sworn states:

I am C.S.M.S. of No. 1 Company, No. 2 Canadian Infantry Holding Unit. On 19th February 1941 I inspected the kit of accused. I found that of the articles listed in the declaration of the Court of Inquiry held on 28th January 1941, he was still deficient of : 1 battle dress blouse, £1 2s 6d; 1 pair battle dress trousers £1 0s 6d; 1 pair ankle boots £1 2s 6d; 1 boot blacking brush 8½d; 1 cap comforter 1s 3d; 1 pair woolen drawers 6s 3d; 1 clasp knife 3s 4d; 1 lanyard 1½d 1 woolen vest 6s 6d; 1 pair socks 1s 11d; 1 haversack 10s 7½d; 1 pack 12s 5½d; 1 shoulder strap 4s 0½d; 1 oil bottle 7d; 1 pull through 3d; total value £5-13-6 3/4

. . . . . .C.S.M.S.

RWh

Accused declines to cross-examine this witness.

Compliance with R.P. 4 (c) (d) (e) certified.

Malcolm MacPherson

(Malcolm Mac Pherson) Lieut.
Officer detailed by O.C. No. 2 Cdn. Inf.
Holding Unit to take Summary of Evidence.

Camp 102
Witley, Surrey
22nd February 1941

LIST OF WITNESSES

In the case of

No. E 4593 Private Louis Philippe Ouellette, on the strength of No. 2 Cdn. Infantry H lding U it, as a reinforcement of his regiment, a soldier of the Canadian Army (Overseas)

Prosecution

Lieut. W.H. De Veber, No. 2 Canadian Infantry Holding Unit

E17009 C.Q.M.S. Gagne, F. No. 2 " " " "

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 24th day of Feb. 1941.

J. W. Lewis Jr. Capt.
Adjutant,
No. 2 Inf. Fifle Holding Unit, (C.A.S.F.)

Rwh

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

E 4593 Pte. Louis Philippe Ouellette of the No. 2 Coln. Inf. Holding 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.

†See Para. 664, K.R., 1935.

*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.

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 Absence Without Leave	5	times	5	times.
For Drunkenness	2	times	2	times.
For Offering Violence to Superior Officer	1	times	1	times.
For Minor Offences	5	times	5	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.

Wt. 43648/624 50,000 2/40 W. S. Ltd. 51—6004

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 — days in Civil Custody,

and 25 days in Military Custody.

Total 25 days.

Of which _____ days were spent in hospital.

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

6. The date of his ~~commission~~ specified in his ~~record of service~~ attestation paper is 4 Nov. 29

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 yr. 72 d.

8. The accused is entitled to deferred pay or gratuity in respect of 1 yr. 72 d. years' service.

9. The accused is entitled to reckon 1 yr. 72 d. 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 [~~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.

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 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.

(*Continued overleaf.*

MEDICAL CERTIFICATE

No 1 Company No 2 Cdn Inf Hold. Unit

STATION Witley. DATE 4 Mar 1941.

I certify that No. E-4593 Name Ouellette. L.P.

of the R.22.R. is in a fair state of

health and fit to undergo detention or trial

by Court-Martial. To be deloused to-morrow afternoon

W.R. Boutter/Major

Medical Officer. RCAMC

Sheet destroyed 4-5-40

Date of enlistment 4-11-39 — Sheet No.

No. E4593 Name Ouellette L P. — Sqn., Battv., or Company — Corps R 22nd R C.A.S.F.

Date of last entry in Company Conduct Sheet 12-4-40 — No. and date of last drunk Three 16-1-40 — G.C. Badges — Long Service and G.C. Pay — Signature of C.O. Company, etc.

Army Form B 122

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of Award	By whom awarded	Remarks
Guillemont	3-5-40	Pte		W.O.A.S. neglected to conform to instructions given by superior officer	L/C Mc Ginnis Pte Poirier R	7 dys C B	6-5-40	J.C. Charlebois Capt	
"	22-5-40	Pte		Failing to appear on guard mounting at 1630 hrs 22-5-40 after ordered to do so by his superior officer	Cpl Duval R L/C Ducherne	3 extra guards	23-5-40	Lt-Col P. Flynn	
"	11-3-40	"		When on active service conduct to the prejudice of good order and military discipline in that he offered violence to his superior officer	Sgt Miville Cpl Dullaire	168 hrs detention	11-3-40	Lt. Col. P. Flynn	
In the Field	28-6-40	"	(4)	Drunkeness	Sgt Beaudet L/C Maisonneuve	7 days C.B.	1-7-40	Lt-Col P. Flynn	Fined $5.00

[P.T.O.

Wt. 53563/1238 4/40 1,000,000 S.P.Co. 51-6627

Place	Date of Offence	Rank	Case of Detachment	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order discharging with trial	By whom awarded	Remarks
In the Field	30-7-40	Pte		W.O.A.S. A.W.L. from 2100 hrs 30-7-40 until 2230 hr 31-7-40 Total 25.30 hrs	C.S.M. Dagernais	7 dys C.B.	1-8-40	Major La Fontaine	2 days pay
In the Field	20-8-40	"		W.O.A.S. A.W.L. from guard mounting at 1900 hrs 20-8-40. A.W.L. from Quarter from 1900 hrs 20-8-40 until 2330- hrs 21-8-40 Total absence 28.10 hrs	Cpl Poirier Cpl Quintal	168 hrs field punishment under restricted pay for 2 months	23-8-40	Major Duis	2 days pay
In the field	5-8-40	"		W.O.A.S. A.W.L. from 0530 hrs at reveille 5-8-40 until 1610 hrs 9-8-40: total 4 days 8 hrs 40 min	Cpl Gosselin L/Cpl Dionne	168 hrs field punishment	12-8-40	Lt.Col.P. Flynn	5 dys pay
In the field	31-8-40	"		W.O.A.S. neglected to obey an order given by his superior officer	Sgt Peloquin Pte Croulx	168 days detention	2-9-40	Major Poirier	
Louisburg	11-12-40	"		Sec. (15) 1() W.O.A.S. Overstaying his pass 4 hrs 10 min. Sec 15 (2) failing to appear on parade	Sgt Nobert	7 days C.B.	18-12-40	Omer Gauthier Lieut	

R 22nd R

Date of enlistment 4-11-39 Sheet No.

No. E4593 Name Ouellette L.F. Sqn., Batty., or Company Corps

Date of last entry in Company Conduct Sheet | No. and date of last drunk | G.C. Badges | Long Service and G.C. Pay | Signature (O.C. Company, etc.)

Army Form B.122

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award	By whom awarded	Remarks
Witley Camp	13-12-40	Pte		WOAS AWL from 2200 hr 13-12-40 until apprehended in London by M.P. at 0045 hrs 24-12-40 - 10 days 2 hr 45 min	Sgt Nobert	Fined 28 days pay and to forfeit 11 days of pay	26-12-40	Major Rodgers	39 days forfeiture of pay $15.00 Fined $15.00
			(5)	2 Drunkeness		Documentary Fined $15.00			
Witley	27-12-40	Pte		Sec 15 (1) WOAS AWL from 2200 hr 27-12-40 until app. in London at 0300 hrs 31-12-40	Sgt. Gatien Evidence attached	4 days pay 7 days C.B.	2-1-41	P.E. Belanger Major	4 days pay

[P.T.O.

156 D. Pte. L. P. Trullette, (2nd case)

See 90A for 1st case
107I " 3rd "

Correspondence to be PINNED here.

PROCEEDINGS REVIEWED

18/11/41

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 -sixth day of November, 19 41.

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 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:—]

President.

Rank.	Name.	Regiment.
Major	W.B. Carson	Carlt & York R

Members.

Rank.	Name.	Regiment.
Capt	J.O. Millard	West NSR
Lieut	W.G. Wells	R 22e R
Capt	G.F. Johnson	West NSR

*Signed [signature]

Brigadier

Commanding 3 Cdn Inf Bde

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*)
E.4893 Pte Ouellet, L.P. R 22e R	1st Charge Sec (15(1) A.A.	Guilty	Guilty 120 days Detention	Confirmed A.D.G.

* 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.D.G. Brigadier (Signed) W.O. Quinn Major
Commanding 5 Can Inf Bde *Convening Officer* (*c*) *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 8th day of November 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)
*(4. The officers under instruction)

* Omit if not applicable.

were duly sworn.

Signed this 8 day of Nov 1941.

W.O. Quinn 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 this margin be sent com~~ ~~mitted to prison until further orders~~)

A.D.G.

* 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 November 1941.

A.D.G. Brigadier
Comd 5 Can Inf Bde *Confirming Officer.*

Promulgated and extracts taken in the case of E 4893 Pte Ouellet L.P.

(*a*) (Dated) 11 Nov 41 (Signed) Capt Lieut Adjutant.
ROYAL 22e REGIMENT, C. A. S. F.

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.

(44728) Wt. 40115—493 300 M 1/42 P. St. G. 540

C H A R G E S H E E T

The accused E. 4593 Pte. Cuellet L.P., Royal 22e. Regiment, a soldier of the Canadian Army, (Overseas), is charged with, when on Active Service:-

FIRST CHARGE

Sec 15 (1)

ARMY ACT

ABSENTING HIMSELF WITHOUT LEAVE

in that he,

In the Field, absented himself without leave, from 2230 hrs, 6th July 1941, and remained absent until apprehended by Military Police, at Free French Service Security H.Q. Carlton Place, London, at about 1845 hrs, 19th October 1941.

P.E. Bernatchez

(J.P.E. BERNATCHEZ), Lt.-Col,
Commanding Royal 22e. Regiment,
Canadian Army, (Overseas).

3 Nov 1941.

To be tried by Field General Court Martial

H.W. Gauvreau Brig

Comd 3 Can Inf Bdg

S U M M A R Y O F E V I D E N C E

in the case of

E. 4593 Pte. Ouellet L.P., Royal 22e. Regiment,
a soldier of the Canadian Army, (Overseas).

EVIDENCE TAKEN ON OATH BY ORDER OF COMMANDING OFFICER

FIRST WITNESS FOR PROSECUTION

Lieut P. Hart, having been duly sworn states:-

" I am an Officer of the Royal 22e. Regiment, and at present acting Adjutant of the Unit. I hereby produce A.F.B. 252, dated 19th October 1941, and a declaration of a Court of Inquiry, dated 29th July 1941, both these concern the accused, whom I now recognize.

P. Hart
.....Lieut

SECOND WITNESS FOR PROSECUTION.

Accused declines to cross-examine this witness.

Captain E. Thomelin:-

Statement by Captain Thomelin is attached to the Summary of Evidence and has been read to the accused, who was duly cautioned in compliance with R.P. 4 (E), and who raised no objection, nor ask any questions.

The accused was given the opportunity of making a statement but declined to do so and reserves his defence. The evidence was taken down by me, in the Field this 24th day of October 1941, in the presence and within the hearing of the accused.

Compliance with R.P. (c) (d) (e) & (f) certified.

Laurence Cannon
.....Lieut
Officer detailed by O.C. R.22e.R.
to take Summary of Evidence.

8 Nov.

E 4593 Pte Ouellet L.P.

Lt G.F. Chisonie
Capt J. Galvin

NO

Yes

[illegible]

DEFENCE

The accused is informed of his rights in accordance with R.P. 40 (a) and note 8 of page 644 of the Manual of Military Law,1929 edition.

The accused is asked the following questions:-

Q.1. Do you wish to give evidence as a witness?

A.1 NO

Q.2. Do you intend to call any other witnesses on your behalf?

A. 2 NO.

Q.3. Are they witnesses as to character only?

A. 3. NO.

FORM C

PAGE

After finding

H. G. F. Chicoine is sworn and states:-

I produce a certified true copy of A.F.B.122 relating [illegible] to [illegible] by the President, and attached to the Proceedings).

Question to the accused:

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

Answer

The (Accused) (Defending Officer) makes the following plea in mitigation of sentence:-

Attached

PLEA IN MITIGATION BY DEFENCE COUNSEL.

The points I want to raise are:- The Accused has been in Detention since the 19 Oct 41. He was, I believe on what is called a "Spree". He is a heavy drinker and did not realize the seriousness of his offence. He told me and I am quite prepared to believe it, that if the Unit had been involved in any Operation at all, he would have willingly returned. He claims he was quite fed up, with what he describes himself, as a "Boy Scout War". Furthermore, I wish to have the Accused examined by a Medical Board to establish his fitness to be judged by this Court. He is young and has suffered both physically and mentally by his swift transition from home Conditions to the proximaty of large Cities.

STATEMENT BY ACCUSED.

I, No. E. 4593 Pte. Ouellet L.P., desire to have an Officer assigned to represent me at my trial by F.G.C.M.

I desire the services of Captain J. Galaise if he is available.

L.P. Ouellet ..... Pte.

I hereby certify that I have been given free charge a copy of all the proceedings, documents, etc., relative to my trial by F.G.C.M.

L.P. Ouellet ..... Pte.

LIST OF EXHIBITS

in the case of

B. 4593 Pte. Ouellet L.P., Royal 22e. Regiment,
a soldier of the Canadian Army, (Overseas).

(a) A.F.B. 252 dated 19 Oct 41,

(b) Declaration of Court of Inquiry, dated 29 Jul 41.

A.

RECORD of the Declaration of a Court of Inquiry assembled at

In the Field on the 29 day of July 19 41

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. No. E. 4593 Pte. Ouellette P., Royal 22e.Regiment.

DECLARATION

The Court declare, That No. E. 4593 Pte. Ouellette P. absented himself without leave at 2230 hours 6-7-41, that he is still absent and that on 6-7-41 he was deficient and is still deficient of the following articles:-

1 pr Web anklets		3.	11.
1 Badge cap		1.	6.
1 Battle Dress	2.	3.	0.
1 pr Boots ankle	2.	5.	0.
1 pr Braces		1.	6
1 Blouse denim		12.	9
1 Comb hair			2.
1 Cape A/G.		13.	6.
2 prs Drawers cotton		4.	4.
1 pr Drawers woollen		6.	3.
2 prs Drawers cotton gym		4.	1.
2 sets detector gas ind.			8
1 F.S.C.		2.	2
1 Field Dressing		1.	2
1 pr Gloves woollen		1.	8
1 Knife clasp		2.	10
1 Knife table			8½
1 respirator complete		16.	10
1 oil bottle			7
1 steel helmet		7.	0
1 Wallet A/G.			8
1 Blanket		12.	0
2 prs Divisional patches			3
3 prs Regimental patches		11.	9
TOTAL:		9. 14.	3½

Names of President and Members:

President:- Major Fernand Trudeau, R.22e.R.

Members :- Lieut.G. Cloutier, R.22e.R.
Lieut.G. Vaugeois, R.22e.R.

Signature of Commanding Officer.....

(L.P.F. PAYAN), Major,
A/Commandant, Royal 22e.Regiment,
Canadian Army, (Overseas).

Certified true copy.....

Signature of Officer having custody of original record

(A.F. CANNON), Captain,
Adjutant, Royal 22e.Regiment,
Canadian Army, (Overseas).

M.F.B. 375
2M 10 39 (2498)
S.J. 1772 39 257

B

MEDICAL CERTIFICATE.

This is to certify that Reg No. F4593 (Rank) Pte

(Name) DUELLETTE, P. Royal 22e. Regiment, (C.A.S.F.)

(Is not) mentally and physically fit to undergo trial before

a Court-Martial and (is ~~—~~) is fit to undergo Deten-

tion with or without hard labour.

Signed C. Bramblay Major.

Unit A Coul.

In the field,

Date 9-11-41

[illegible]

CHARGE C

Army Form B 252
(See King's Regulations)

Royal 22e. Regiment. Regiment

"B" Coy. Battery / Squadron / Troop or / Company

CHARGE against No. E. 4593 Rank Pte.

Name Ouellet L.P.

Place London Date of Offence 19 Oct 41

OFFENCE N.O.A.S. was A.W.L. from 2230 hrs 6-7-41 till apprehended by the Cdn Prov C at Carlton Place at about 1845 hrs on the 19 Oct 41. Total 3 months 13 days 20 hrs 15 min.

Canadian Military Police
London Area

Names of Witnesses:—

L/Cpl Wood Canadian Provost Corps

L/Cpl Bianchini Canadian Provost Corps

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O

WLW 3349 1166 2,000,000 11/40 K & H. Ltd. G657/47

Statement of EVIDENCE in the case of
E. 4593 Pte. Ouellet L.P.
"B" Coy Royal 22e. Regiment,

Sir:-
At London at about 1345 hrs on the 19 Oct 41 I was on duty at No. 6 Cdn Prov Coy H.Qrs when acting on instructions received I proceeded to the Free French Service Security H.Q. Carlton Place where the s/m soldier was given into my custody. He had been detained by Lt. Adjt Ambacerns of the French Service Security. On arrival the s/m admitted to me that he was A.W.L. I placed him under arrest and escorted him to No. 6 Cdn Prov Coy H.Qrs where I handed him over to the N.C.O i/c cells to be detained.

London
19 Oct 41. ..(Wood.W.J.).....L/Cpl

I;
I was N.C.O. i/c cells when the s/m soldier was brought in to be detained.

London
19 Oct 41. A Bianchini .....L/Cpl

True copy.

REMARKS

Certified true copy,

.....Adjutant,

FREE FRENCH FORCES

RECORDS OFFICE.

27 Oct 1941.

CERTIFICATE.

I undersigned, Captain Thomelin, chief of the Records Office, for the Free French Forces, certify that I have no man on my nominal rolls by the name of Ouellet L.P.

Signed (E. THOMELIN),

Central Depot,
Free French Forces.

True Copy.

Due to the exigencies of the service the evidence of this witness was not procurable in the presence of the accused, nor can be attend a F.G.C.M. as a witness.

(V. MORIN), Lieut,
Royal 22e. Regiment,
Canadian Army, (Overseas).

FREE FRENCH FORCES
NATIONAL COMMISSARY AT THE WAR.

E

Last sheet destroyed 4-5-40

No. E 4593 Name Ouellette L.P. Sqn., Battery, or Company — Corps R.22e.R. — Date of enlistment 4-11-39 — 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 — 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
Field	3-5-40	Pte.		W.C.A.S. Neglect to conform to ane instruction given by a sup Officer	L/C McGennis Pte. Poirier	7 days C.B.	6-5-40	J.G. Gendreau Cap	
Guillemont	22-5-40	Pte.		Failing to appear on Gd mounting 1630 hrs 22-5-40 after ordered do so by a sup officer	Cpl Duval L/C Duchesne	3 extra gds	23-5-40	Lt.-col Flynn	
Guillemont	11-3-40	Pte.		W.C.A.S. conduct to the pre udice eto in that he, offered violence to a sup Officer	Sgt Miville Cpl Delaire	168 hrs det	11-3-40	Lt.-col Flynn	
Field	28-6-40	Pte.	(4)	Drunkenness	Sgt Beaudet L/C Maisonneuve	7 days C.B.	1-7-40	Lt.-col Flynn	Fined $5.00
Field	30-7-40	Pte.		W.C.A.S. A.W.L. from 2100 hrs 31-7-40 until 2230 hrs 31-7-40 total 25.30 hrs	Sgt Robert Sgt Miville	7 days C.B.	1-8-40	Maj Lafontaine	2 days pay

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~~	~~20-8-40~~			~~Certified true copy.~~					
In the Field	5-8-40	Pte		W.O.A.S. A.W.L. ~~xxxxxxxxxxxxxx~~ ~~ing~~ from 0530 hrs 5-8-40 till 1610 hrs 9-8-40 Total of absence 4 days, 8 hrs, 40 minutes.	L/Cpl Dionne	168 detention	1-8-40	Maj. Lafontaine	2 days pay.
In the filed	20-8-40	Pte		W.O.A.S. A.W.L. from guard mounting 1900 hrs 20-8-40 till 2310 hrs 8-40 Total 1 day 4 hrs 10 mts.	Cpl Poirier 2 Leuemet	168 hrs F.P.	23-8-40	Maj. Blais	5 days pay.
In the Field	1~~2~~-9-40	Pte		W.O.A.S. neglecting to obey order given by superior officer.	Sgt Peloquin	168 Det.	2-9-40	Maj. Poirier.	Placed under stoppage of pay for 2 mons
Loisburg	1~~1~~-12-40	Pte		Sec. 15 (1) W.O.A.S. Oversteying his pass 4 hrs 10 mins. Sec 15. (2) failing to appear on parade.	Sgt Nobert ~~8~~ Miville	2~~8~~ ~~xxxxxxxxxx~~ 1~~1~~ ~~xxxxxxxxxxxxxx~~ ~~of~~ ~~pay~~ 7 days C.B.	1~~5~~-12-40	~~Majxxxxx~~ ~~xxxxxxxx~~	39 days pay.
Witley Camp	1~~3~~-12-40	Pte		W.O.A.S. A.W.L. from 2200 hrs 13-12-41 until apprehended in London by M.P. at 0045 hrs 24-12-40 absent 10 days 2 hrs 45 mins.	Sgt Nobert	28 days pay 11 days stop of pay....	26-12-40	Maj. Morgan	39 days pay.

No. E.4593 Name Ouellet L.P. Sqn., Battery, or Company Corps R 22e R Date of enlistment 4-11-39 G.C. Badges Service or Proficiency Pay

M.F.M. 6
A.F.B. 122
MOM.-8-30 (1700)

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
Witley	27-12-41	Pte	(5)	2. Drnkeness. Documentary Sec 15 (1)W.O.A.S. A.W.L. from 22oo 27-12-40 until app. in London at 0300 hrs 31-12-40	Sgt Gatien	Fined$15.00 4 days pay 7 days C.B.	26-12-40 2-1-41	Maj. Rodgers F.E. Belanger Major	4 days pay. 7 days C.B.
In the Fie d	13-5-41	Pte		W.O.A.S absent from duty night exercise	C.S.M. Descoteaux Cpl MasseZ.	7 Days F.P. 7 days pay	16-5-41	Lt.Col.Poirer	
In the Field	12-6-41	Pte		W.O.A.S. Absent from parade	Cpl Boucher M	2 days C.B.	13-6-41	Capt. Vallee G	

Certified true Copy

for [signature] Adjutant,
ROY/d-02-46 [illegible] A.S.F.

[illegible]

(P.T.O.)

F.

SHORT STATEMENT AS TO PARTICULARS OF SERVICE OF THE ACCUSED.

(a) The accused has been in confinement awaiting trial on the present charges for....Nil... days and in civil custody for....19 days.... in military custody making a total of 19 days, of which Nil were spent in hospital.

(b) The present age of the accused according to his own statement is 23 years.

(c) The date of his attestation specified in his attestation papers is 4/11/39.

(d) The accused is in possession of, or entitled to no military decoration or military reward (or is in possession of or entitled to)

Nil

I hereby certify that the foregoing particulars are true extracts from the Regimental Books in my custody.

Capt Lieut ..... Adjutant,
ROYAL 22e REGIMENT, C. A. S. F.

Capt Lieut

107 I (3rd case)

See 90 A. for 1st case
156 D " 2nd "

REGIMENTAL DOCUMENTS

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

NAME Pte. OUELLETTE, L.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.2589
60/P & S/1110

E 4593 Pte Ouellette, L.
R.22eR. No. 1 C.D.I.R.U.

1071

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 31st day of MAY, 1942.

Whereas it appears to me, the undersigned, an officer in Command of "A" GROUP REINFORCEMENT UNITS, C.R.U., 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.)~~ ✓ N.G.

* 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.)~~ N.G.

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

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

PROCEEDINGS REVIEWED.

[signature] Graham bapt
Barrow Officer (PD) [illegible]
16 Jun 42.

Lt Gen [illegible]
2.6.42
Exhibit "A"

President.

Rank.	Name.	Regiment.
Major	W. Worsick	Camerons of C. #2CDIRU

Members.

Rank.	Name.	Regiment.
Captain	C.E. Anderson	Carlt. & York R. #1CDIRU
Lieutenant	I.M. Bell-Irving	Seaforth of C. #1CDIRU
Lieutenant	J.B. Williams	Calg. Highrs #2CDIRU

*Signed [signature] Colonel,

Commanding "A" Group Rein Units.

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*)
E 4593 PTE OUELLETTE, L. R. 22e R. No. 1 C.D.I.R.U.	First Charge A.A. Sec. 15(1)	Guilty	Guilty	I confirm the finding and Sentence of the Court.
	Second Charge A.A. Sec. 10(3)	Guilty	Guilty Sentenced to undergo 6 months detention 2.6.42 W Dorsan Maj	Chas. Dawes Lt/Colonel 6.6.42
	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*):—

(Signed) Chas. Dawes LT.-COLONEL COMMANDING A. & R. REIN. UNITS. C.A.(O.) (*Commanding*)

(Signed) W Dorsan Maj 2 Bde R.H. (*Convening Officer (e)*)

(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 2nd day of June 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~~) Shorthand writer
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 2nd day of June 19 42

W Dorsan Maj
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.)~~ 18.9.

* 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 6th day of June 1942

Chas. Dawes LT.-COLONEL COMMANDING A. & R. REIN. UNITS. C.A.(O.)
Confirming Officer.

Promulgated in DO 136 / 136d/16/6/42

Promulgated and extracts taken in the case of E-4593 Pte. Ouellette, L.
Promulgated in D.O. 136 - 10/6/42
(a) (Dated) June 9th, 1942. (Signed) (C.C. Ferrie) Lt.-Col. A/Commander, No. 1 Cdn. Div. Inf. Reinf. 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.

(41735) Wt. 40115—983 500 m 8/40 P.St. G. 6a

6 June 42.

Officer Commanding,
"A" Group,
C.R.U.

Recommendation of the Court of a
Field General Court Martial sitting at
Laurentide Camp, Witley, Surrey, 2 June 42,
for the trial of
E-4593 Pte. Quellette, L., R.22e R., No.No.1 C.D.I.R.U.

Recommendation that he be returned to Canada for disposal on account of being Categary "B" if necessary before the expiration of sentence.



W. Worsick Maj.
(W.Worsick) Major,
No.2 C.D.I.R.U.

CHARGE SHEET

The accused, H-4593, Private Ouellette, Royal 22e Regiment, on the strength of No.1 Canadian Division Infantry Reinforcement Unit, a soldier of the Canadian Army (Overseas), is charged with:

1st Charge
Sec.15(1)
Army Act.

When on Active Service, absenting himself without leave;

in that he:

At Algonquin Camp, Witley Surrey, absented himself without leave from 0600 hours on the 30th day of April, 1942, until apprehended at London at about 2230 hours on the 23rd day of May 1942. Total absence, 23 days, 16 hours, 5 minutes.

2nd Charge
Sec.10(3)
Army Act.

When on Active Service, resisting an escort, whoseduty it was to apprehend him;

in that he:

At London on the 23rd day of May 1942, struck at and struggled violently with, A-6088, L/Cpl. Jefferies, W.A. of the Canadian Provost Corps, whose duty it was to apprehend him.

.....Major
(N.F. Sinclair) A/Commander
No.1 Cdn. Div.Inf. Reinf. Unit.

Algonquin Camp,
Witley Surrey,
May 28th 1942.

To be tried by Field General Court Martial.

(A. Hamilton Gault) Colonel,
Commanding,
"A" Group Cdn. Reinf. Units,
C. A. (O).
(Convening Officer)

Witley, Surrey
31 May 1942.

MEDICAL OFFICER'S CERTIFICATE

R.C.A. (Can) Para. 552

I certify that I have this morning examined No. A-4593
Pte. Ouellette, L., Royal 22e Reg't
No. 1 Cdn. Div. Inf. Reinf. Unit, and in my opinion,
he is ~~unfit~~ fit to undergo trial by Court-Martial.

Algonquin Camp,
Whitley,
June 2nd, 1942.

.....Capt.
(Medical Officer) R.C.A.M.C.

H-4593 Pte. Ouellette, L. (R.22eR.) # 1 C.D.I.R.U. tried by Field General Court Martial at Laurentide Camp, Witley, Surrey, 2 June 42.

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

President of the Court: Major W. Worsick (QOCHof C) # 2 C.D.I.R.U.
Members of the Court: Capt. C.E. Anderson (C&YR) # 1 C.D.I.R.U.
Lieut. I.M. Bell-Irving (SHofC) # 1 C.D.I.R.U.
Lieut. J.B. Williams (Calg Highrs) # 2 C.D.I.R.U.

Prosecutor: Lieut. J.R. Turner (Edm Regt) # 1 C.D.I.R.U.
Defending Officer: Lieut. J.B. Dumont (R.22e.R.) # 1 C.D.I.R.U.

Officers under instruction: Lieut. A.P. Doucette # 5 C.I.R.U.
Lieut. C.H.E. Askwith (RHR) # 2 C.D.I.R.U.

At 0930 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.

Q.1. Do you object to be tried by me as president or by any of the other officers whose names you have just heard read?
A.1. No sir.

The President and members are duly sworn.

Officers under instruction are duly sworn.

Q.2. Do you object to K 53322 Sgt. Wm. Pawluk (SHofC) # 2 C.D.I.R.U. acting as Court Stenographer?
A.2. No sir.

The Court Stenographer is duly sworn.

The Medical Certificate was presented by the Prosecutor, marked Exhibit "B", signed by the President of the Court, and annexed to the Proceedings.

The Charge Sheet was read to the accused, marked Exhibit "C", signed by the President of the Court, and annexed to the Proceedings.

Q.3. Are you guilty or not guilty of the first charge against you which you have just heard read?
A.3. Guilty, sir.
Q.4. Are you guilty or not guilty of the second charge against you which you have just heard read?
A.4. Guilty, sir.

R.P. 35 (b) is complied with by the Court.
Prosecutor is duly sworn.
The summary of evidence is read, marked Exhibit "D", signed by the President of the Court, and annexed to the Proceedings.

Prosecution presented to the Court # 1 C.D.I.R.U. Part II D.O. 121, signed by the President of the Court, and annexed to the Proceedings, Marked Exhibit "D".

Prosecution presented to the Court Statement as to Character and Particulars of Service of Accused together with a certified true copy of [illegible] M.F.M. 6, marked Exhibit "B", signed by the President of the Court, and annexed to the Proceedings.

The accused makes a statement. Questioned by the Defence:

Q.1. How long have you been in the army?
A.1. Since 17 Nov 1939.
Q.2. Will you tell the court what kind of trouble you suffer from.
A.2. I have got bad stomach trouble and also trouble with my neck, and every time I go to the R.AP. I get two needles for V.D. treatment.
Q.3. Have you any other trouble?
A.3. I have been going out with a girl in London and she is now in trouble.

She wrote to the C.O. and he has asked me whether I will marry her.
Q.4. Why did you go A.W.L.?
A.4. I went to see if all the things would be all right for her baby.

Court questions the accused
Q.1. Did you apply for leave?
A.1. Yes and all the time they refused me.

Defence questions the accused.

Q.1. Did you pass a medical examination?
A.1. Yes sir.
Q.2. When?
A.2. April of this year.
Q.3. What is your category now?
A.3. Some say I am "E" Category.
Prosecution declines to cross-examine.
Closing address by the Defence:

I would like the court to be lenient to the accused so that he can go back to Canada as he is Category "E". His venereal disease prevents him from being an efficient soldier.

Court is closed for consideration of sentence.

I certify this to be a true transcript of my shorthand notes, which were taken down to my best ability.

Sgt. W. Pawluk

K 53322 Sgt. Wm. Pawluk
Court Stenographer

SUMMARY OF EVIDENCE

In the case of M-4593 Private L. Ouellette, Royal 22e Regiment, No.1 Canadian Division Infantry ~~Reinforcement~~ Unit.

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

1st Witness for the Prosecution

Captain, G. Cruickshank, Officer in charge of Records No.1 C.D.I.R.U. having been duly sworn states:

I am Capt. G. Cruickshank, Officer in charge of Records, No.1 C.D.I.R.U. I produce exhibit "A" Part II Order No.1 C.D.I.R.U. No.121 dated 25 May 42, which shows that the accused whom I now recognize absented himself from 0600 hours 30 April 1942 and on the 21 May 1942 was still absent.

I produce exhibit "B" a certificate in accordance with the Army Act, Section 163 (1)(jj) relating to the accused. This document purports to be signed by Lieut. R.W. Bowling, No.6 Provost Coy.

The accused declines to cross-examine this witness.

George Cruickshank Capt.
Officer i/c Records
No.1 C.D.I.R.U.

2nd Witness for the Prosecution

Statement by A-6088, L/Cpl Jefferies, W.A. in the case of M-4593, Pte L. Ouellette No.1 C.D.I.R.U..

Sir, At London on the 23-May-42 at about 2205 hours acting on instructions received and in company withL/Cpl. Wright. I proceeded to the Duke of Westminster Public House on Dean St. London, where I saw the a/m soldier. I approached him and asked him if I might speak to him outside. L/Cpl. Wright and I went outside and the a/m soldier tried to escape by going into another section of the Pub. where there was a door leading into Dean St. L/Cpl. Wright and I separated and I went into the Public House again. The a/m soldier was standing behind the door and as I entered he struck at me. We struggled violently for a few moments and then with the aid of a soldier in the pub I was able to get the a/m soldier out to the street where I was joined by L/Cpl. Wright. The a/m soldier was kicking and punching violently and had to be handcuffed. He was then escorted to No.6 Provost Coy H.Q. where it was ascertained that he was A.W.L. In the Public House the a/m soldier stated that he was not a French Canadian soldier but was a Free French soldier.

London
23-May-42

Signed.W.A..Jefferies.L/Cpl

A written statement of this witnesses evidence purporting to be signed by him has been read to the accused and is included in this Summary of Evidence. Due to the loss of time involved the attendance of this witness cannot in my opinion be readily procured. The accused does

SUMMARY OF EVIDENCE

In the case of E-4593, Private L. Ouellette, Royal 22e Regiment
No.1 Canadian Division Infantry Reinforcement Unit.

2nd Witness for the Prosecution; (Cont)-
the accused does./

not demand the attendance of this witness for cross-examination.

J.R. Turner Lieut.
Officer Taking Summary.

3rd Witness Statement of L/Cpl. Wright G. B-76282,
for the
Prosecution I have read over and corroberate to the above statement.

London
23-May-42 (Signed)G..Wright.....L/Cpl.

A written statement of this witnesses evidence purporting to be signed by him has been read to the accused and is included in the Summary of Evidence. Due 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

J.R. Turner Lieut.
Officer Taking Summary.

The accused has been duly warned in French according to Rule of Procedure 4(E) (C.A.R.O.)1424 reserves his defence.

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

Taken down by me in the presence and hearing of the accused this 27th day of May, 1942 at Algonquin Camp, Witley, Surrey.

J.R. Turner Lieut.
Officer Taking Summary.

Ex "B"

Certificate in accordance with the Army Act Section 163 (1) (JJ).

I certify that REG'T NO. E.4593.....RANK.Pte.....NAME...Quellette.L.....

UNIT..#1 Cdn.Div.Inf.Rein.Unit..... WAS ARRESTED at(PLACE..London.....

.....at HOUR.2230hrs on DATE.23-May-42... and that at the time of his

arrest he was wearing military uniform.

Signature of Provost Marshal, A.P.M. or other officer into whose custody the above named person was taken in arrest.....H W Cowling Lt.

CHARGE Ex "C"

Army Form B 252
(See King's Regulations)

1 Cdn Div Inf Rein Unit. Regiment

Battery
Squadron
Troop or
Company

CHARGE against No. E.4593 Rank Pte

Name Ouellette, L.

Place London Date of Offence 23-May-42

OFFENCE W.O.A.S. Was absent without leave from [illegible] Until apprehended by the Canadian Provost Corps at the ~~Golden Lion~~ DUKE OF WESTMINSTER Public House Dean St. 2230hrs on the 23-May-42 [illegible]

(2) Resisting a rrest. Same time, date and place.

(3) Stating a falsehood to an N.C.O. of the Canadian Provost Corps. same time, date and place.

[signature]

Names of Witnesses: FOR OFFICER COMMANDING, CANADIAN PROVOST COY.

L/Cpl Jefferies, W.A. Canadian Provost Corps
L/Cpl Wright, G. Canadian Provost Corps

Remanded for [illegible] C.O. [illegible]

Signature of O.C. Battery, Squadron, Troop or Company } Remanded for F.G.C.M.

[signature]

Punishment Awarded }

By whom Awarded }

[signature] Adjutant.

Pt.W34670/1406 1,500,000 10/41 K. & H. Ltd G657/47 P.T.O.

"C"

Statement of EVIDENCE in the case of
--R.4893.Pte Ouellette,J. # 1 C.D.I.R.W.

Sir,

At London on the 23-May-42.At about 2205hrs acting on instructions received and in company with L/Cpl Wright.I proceeded to the DUKE OF WEST-MINSTER Public House on Dean St.London,where I saw the a/m soldier.I approached him and asked him if I might speak to him outside.L/Cpl Wright and I went outside and the a/m soldier tried to escape by going into another section of the Pub. where there was a door leading into Dean.St.L/Cpl Wright and I seperated and I went into the public House again.The a/m soldier was standing behind the door and as I entered he struck at me We struggled violently for a few moments and then with the aid of a soldier in the Pub I was able to get the a/m soldier out to the St.where I was joined by L/Cpl Wright.The a/m soldier was kicking and punching violently and had to be hand-cuffed.He was then escorted to No.6 Cdn Prov-Coy H.Q.where it was ascertained that he was-A.W.L. In the Public House the a/m soldier stated he was not a French Canadian soldier but was Free-French soldier.

London .....W.A. Jefferies.....L/Cpl
23-May-42. A.6088.Jefferies,W.A.

Sir,

I have read over and corroberate the above statement. REMARKS

London .....G. Wright.....L/Cpl
23-May-42. B.76282.Wright,G.

R.C.M.

NO. CANADIAN DIVISION INFANTRY
REINFORCEMENT UNIT
PART II DAILY ORDERS
ISSUED BY
Lt-COL. C.C. PERRIE M.D.
A/CO i/ANDER

LAST ORDER NO. 120 23 MAY 42

THIS ORDER NO. 121 25 MAY 42

SECTION "A" OFFICERS

1. AMENDMENTS STRENGTH INCREASE

Lieut. R. OSLER — (48th) D.O. 46 dated 26 Feb. 42 para 1 insofar as it relates to the n/n is hereby cancelled.

2. STRENGTH DECREASE

Capt. M.E.P. GARNEAU — (R22eR) S.O.S. to H.Q. 4th C.I.B. w.e.f. 24 May 42 (Auth-CMHQ Teleprinter MS 1550 dated 23 May42).

Capt. J.H. ADAMS — (Edm. R) S.W.S. to C.M.H.Q. for duty with A.Q.M.G. w.e.f. 25-5-42 (Auth-CMHQ Tel. MS 1550).

3. ATTACHMENTS

Lieut. C.H. HICKEY — (w.p.i.)) Attached for all purposes from No.1 C.M.G.R.U. w.e.f. 23 May 42 (Pers. Select) and posted to A Wing (Auth-Teleprinter /AT/869 dated 19 May 42).

4. COURSES

Lieut. D.M. McLEAN — (HPE) proceeded on Course No. 720 Ser 5 (Hygiene) w.e.f. 24 May 42 and is attached f.a.p. to Army School of Hygiene

Lieut. C. HUTCHINS — (WNSR) proceeded on C.M.H.Q. Course No.800 Ser. 10 (Anti-Gas) w.e.f. 24 May 42 and is attached f.a.p. to Cdn. Training schools.

5. RETURN FROM COURSE

Lieut. R. DESRIVIERES — (R22eR) returned from C.M.H.Q. Course No. 800 Ser. 9 (A/Gas Regt. Long) and ceases to be attached to C.T.S. w.e.f. 23 May 42.

6. LEAVE OF ABSENCE

Lieut. D.P. SCHILDHAUF — (A Wing) (SP)(FTW) 14 days from 21-5-42 to 4-6-42

Capt. F.G. McLAREN — (48th) (SP)(FTW) 14 days from 22-5-42 to 5-6-42

7. APPOINTMENTS AND PROMOTIONS

Lieut. G.H. CUTHBERTSON — (PPCLI) to be Messing Officer w.e.f. 24 Apr. 42 (Auth-CARO 2018 dated 22 May 42)

Lieut. (A/Capt.) T.J. MacARTHUR — (UHQ) to be Administrative Officer w.e.f. 1 May 42 from Adjutant (Auth-CARO 2018 dated 22 May 42).

Major O.C. O'CONNOR-FENTON — (HPE) to Command H.P.E. Coy w.e.f. 5 Apr. 42 (Auth-CARO 2018 d/22 May 42).

8. POSTINGS

Lieut. G.H. CUTHBERTSON — (PPCLI) Posted to P.E. A Wing as Messing Officer w.e.f. 24 Apr. 42.

NO. 1 CANADIAN DIVISION INFANTRY
REINFORCEMENT UNIT
PART II DAILY ORDERS
SHEET TWO

THIS ORDER
NO. 121
25 MAY 42

SECTION "B" OTHER RANKS

a. STRENGTH INCREASE

D-106851 Pte. BEAUDRY A. (R22eR) T.O.S. from R22eR on admission to No.1 C.G.H. W.e.f. 12 May 42 (Auth- DO 23 d/ 22 May 42 R.22eR.)

E-4491 Pte. CROWE J. (R22eR) W.O.S. from R22eR while attending C.I.H.Q. Course No. 7k9 W.e.f. 5 May 42 (Auth- DO 23 d/22 May 42 R22eR)

A-87791 Pte. DENHAM G. (RCR) T.O.S. from No.1 Cdn. Sigs. Reinf. Unit W.e.f. 24 May 42 (Auth- REC/B87791 dated 20 May 42).

L-4913 Pte. DORION J.P. (R22eR) T.O.S. from R22eR) on being sentenced by FGCM to 6 Months detention W.e.f. 13 May 42 (Auth- DO 23 dated 22 May 42 R22eR).

E-5123 Pte. DUNN F. (R22eR) T.O.S. from R22eR on admission to No.1 C.G.H. W.e.f. 19 May 42 (Auth- D.O. dated 22 May 42 R22eR)

E-84923 Pte. FOUNTAIN L. (48th) T.O.S. from 3 Cdn. Div. Sup. Coy R.C.A.S.C. pending transfer to 48th L. of C. W.e.f. 23/5/42 and posted to 48th Coy.

F-39731 Pte. GUY R.J.G. (MRSR) T.O.S. from MRSR F.U. on admission to Royal Sussex County Hosp. W.e.f. 1 May 42 (Auth- DO 27 dated 19 May 42 MRSR)

E-5395 Pte. HUBENS P.E. (R22eR) T.O.S. from R22eR on being sentenced by FGCM to One Years detention W.e.f. 16 May 42 (Auth- DO 23 dated 22 May 42 R22eR)

L-4145 Pte. HILLIER [illegible]. (R22eR) T.O.S. from R22eR F.U. on admission to No.1 C.G.H. W.e.f. 17 May 42 (Auth- D.O. 23 dated 22 May 42 R22eR).

K-52516 Cpl. NICOLL G. (GH OF C) (GH OF C) T.O.S. from G.H. of C. F.U. while on Small Arms Course W.e.f. 18 May 42 (Auth- DO 41 dated 22 May 42 S.H. of C.)

K-58580 A/Cpl. GUEST T. (R22eR) T.O.S. from R22eR F.U. on being sentenced by FGCM to 90 days detention W.e.f. 17 May 42 (Auth- DO 23 d/ 22 May 42 R22eR).

E-5087 Pte. PLANTE L. (GH OF C) (GH OF C) T.O.S. from G.H. of C. F.U. on admission to No.1 C.G.H. W.e.f. 19 May 42 (Auth- D.O. 41 dated 22 May 42 S.H. of C.)

K-52969 Pte. SWORDY R.R. (R22eR) T.O.S. from R.22eR. while
K-52259 Pte. WALKER J. attending C.I.H.Q. Course 1034 Dr 1 W.e.f. 11 May 42 (Auth- DO 23 dated 22 May 42 R22eR).

D-51030 Cpl. VERMEYEN G.

LAST ORDER
NO. 120
23 MAY 42

N[illegible] 1 CANADIAN DIVISION INFA[illegible]
REINFORCEMENT UNIT
PART II DAILY ORDERS
SHEET THREE

THIS OR[illegible]
NO. 121
25 MAY 4[illegible]

10. AMENDMENTS STRENGTH INCREASE

L-41532 Pte. MORIN A.	(D.O. 118 dated 21 May 42 para 3(n) insofar as it relates to the m/n is hereby cancelled.
F-40334 Pte. SCEVILLE W.H.	(WNSR) D.O. 6 dated 6-12-41 para 3 insofar as it relates to the m/n is hereby cancelled.

11. STRENGTH DECREASE

D-106051 Pte. BEAUDRY A.	(R22eR) S.O.S. to No.1 C.N.E.T.D. while in hospital w.e.f. 18 May 42 (Cat. E).
M-16483 Pte. KAWALILAK S.M.	(Edm.R) ceases to be attahced f.a.p. to C.M.H.Q. on being S.O.S. to that Unit w.e.f. 20 May 42 (Auth- DO 63 dated 22 May 42 CMHQ).
B-72589 Sgt. MURRISON A.	(48th) ceases to be attached f.a.p. to No.5 Wing C.T.S. on being S.O.S. w.e.f. 11 May 42 (Auth-CMHQ REC/B72589 dated 19 May 42.).
K-53593 Cpl. COOKE B.B.	(SH OF C) S.O.S. to No.5 WING. C.T.S. w.e.f. 2 May 42 (Auth-REC/34/UNITS/724 dated 23 May 42).
P-13239 Sgt. KENNARD G.R.	(RCR) S.O.S. to No.5 Wing C.T.S. w.e.f. 15 Apr. 42 (Auth- REC/34/UNITS/724 dated 23 May 42).
H-16093 Cpl. GERYLO J.	(PPCLI) ceases to be attached f.a.p. to No.5 Wing C.T.S. on being S.O.S. to that formation w.e.f. 4 May 42 (Auth- REC/34/UNITS/724 dated 23 May 42).

12. AMENDMENTS STRENGTH DECREASE

K-53444 A/L/Cpl. GAWTHORN W.J.	(SH OF C) D.O. 80 dated 8 Apr. 42 para 5 insofar as it relates to the m/n is amended to read "L/Cpl.".

13. ATTACHMENTS

G-17471 Pte. DEMPSEY C.S.	(CYR) attached f.a.p. on discharge from hospital pending authority to T.O.S. w.e.f. 22 May 42.
P-15169 CQMS DUFFY D.P.	(RCR) attached f.a.p. on discharge from hospital pending authority to T.O.S. w.e.f. 18 May 42.
2147041 Dvr. BERRINGTON G.	(RE) ceases to be attached this unit for rations and quarters w.e.f. 21 May 42.
K-74949 Gnr. COOPER B.E.	(RCA)
B-6814 Gnr. ARTHUR G.W.	(RCA) attached f.a.p. from No.2 C.A.R.U. w.e.f. 23 May 42 (Pers. Select) and posted to A Wing (Auth-Teleprint /AT/869 dated 19 May 42).
A-4225 Pte. SHIELDS M.	(RCR) attached f.a.p. on discharge from hospital pending authority to T.O.S. w.e.f. 23 May 42.
2146511 L/Cpl. JENNINGS B.L.	(RE) attached for rations and quarters w.e.f. 22 May 42, and posted to A Wing.

AMENDMENTS ATTACHMENTS

C-4800 Pte. PONSFORD G.E.	(HPE) D.O. 120 dated 23 May 42 para 10(d) insofar as it relates to the m/n is amended to read "Sgt.".
F-41592 PSM BARNETT G.A. (	(WNSR) D.O. 118 dated 21 May 42 para 4(b) insofar as it relates to the m/n is amended to read "Pte.".
K-53593 A/Cpl. COOKE B.B.	(SH OF C) D.O. 102 dated 4 May 42 para 10(a) insofar as it relates to the m/n is her by cancelled.
P-13239 Sgt. KENNARD C.R. (	(RCR) D.O. 98 para 7 dated 29 Apr.42 insofar as it relates to the m/n is hereby cancelled.

15. COURSES

M-17153 Pte. AKEY W.L.	(Edm.R)
S-17807 Pte. THOMPSON J. (	(A Wing) proceeded on CRU Course No.4 Ser. 2 (Water Duties) w.e.f. 23 May 42 and are attached No.1 C.G.R.U. while on course.
[illegible]-5759 Sgt. DERASP E.	(R22eR) proceeded on CMHQ Course No.800 Ser. 10 (A/Gas) w.e.f. 24 May 42 and is attached f.a.p. to C.T.S.
B-74302 Cpl. KERR J.W.	(A Wing) ceases to be on CMHQ Course No. 814 Ser.10 (D & M) on proceeding on Course No. 803 Ser. 14 (Motorcycle) w.e.f. 24 May 42 and remains attached to C.T.S.
K-85329 A/Sgt. PALMER L.	(PPCLI) proceeded on CMHQ Course No. 914 Ser 8 (P.T.) w.e.f. 24 May 42 and is attached f.a.p. to 118 Convalescent Depot.

RETURN FROM COURSE

G-18868 Pte. CHIASSON L.	(CYR) returned from CMHQ Course No.1002 (Shoemakers) and ceases to be attached f.a.p. to Cdn. Ord. Stores Depot w.e.f. 23 May 42.
A-3592 A/Cpl. DAVIDSON J.B.	(A Wing) returned from CMHQ Course No.803 Ser. 13 (Motorcycle) and cease to be attached f.a.p. to C.T.S. w.e.f. 23 May 42
B-73761 A/Cpl. HOLLAND J.D.	(A Wing) returned from CMHQ Course 701 Ser. 60W (Regt.Inst) (A/Gas) and ceases to be attached to Army Gas School Winterbourne Wing w.e.f. 22 May 42.
M-16455 A/Cpl. HAYES R.	(Edm.R)
K-52125 Pte. JOHNSTONE W.S.	(A Wing) returned from CRU Course No.4 Ser. 1 (Regt. Water Duties) and ceases to be attached to No.1 C.G.R.U. w.e.f. 23 May 42.
D-106045 A/Cpl. LAPIERRE O.	(A Wing)
B-74302 Cpl. KERR J.W.	(A Wing) returned from CMHQ Course No. 814 Ser. 10 and cease to be attached f.a.p. to C.T.S. w.e.f. 23 May 42.

17. HOSPITAL ADMISSIONS

E-4433 Pte. PAYETTE D.	(A Wing) Mil.Hosp. Reading 17-5-42.

18. HOSPITAL TRANSFERS

R-53107	Pte. GREGORY H.	(SH OF C) 1 Conv. Depot 20-5-42
R-52231	Pte. KINNUNEN R.E.	(SH OF C) 1 Neuro Hosp. 21-5-42
L-23582	Pte. MARIAGE G.E.	(R22eR) No.15 C.G.H. 18-5-42
F-40077	Pte. RUSHTON G.J.	(WNSR) Horton Emerg. Hosp. 14-5-42
B-72861	Pte. STENNETT J.	(48th) No.15 C.G.H. 18-5-42

19. HOSPITAL DISCHARGES

F-13230	Cpl. RICHARDSON R.H.	(RCR) No.1 C.G.H. 16-5-42
H-16001	Pte. JOHNSON J.	(PPCLI) No.8 C.G.H. 16-5-42
C-5045	Pte. THOMPSON C.	(HPE) No.1 C.G.H. 22-5-42
F-15169	CQMS DUFFY D.P.	(RCR) No.15 C.G.H. 18-5-42
G-17471	Pte. DEMPSEY C.	(CYR) No.1 C.G.H. 22-5-42
H-52574	Pte. BAGER N.	(SH OF C) No.1 C.G.H. 18-5-42
F-42577	Pte. CANNING J.C.	(WNSR) No. 15 C.G.H. 17-5-42
K-52890	Pte. COLE E.G.	(SH OF C) No.1 C.G.H. 16-5-42
G-4/295	Pte. SHAW R.G.	(CYR) No.1 C.G.H. 16-5-42
[illegible]-79301	Pte. ATKINSON H.C.	(WNSR) No.2 C.M.C. 16-5-42
K-85260	Pte. BAJER J.R.	(SH OF C) No. 5 C.G.H. 19-5-42
[illegible]-4284	Pte. FENTON H.S.	(RCR) No.1 C.G.H. 20-5-42
[illegible]-4197	Pte. BOURGOIN J.	(R22eR) Aushendrane Aux. Hospital 22-5-42
C-41329	Pte. O'MEARA	(HPE) No.5 C.G.H. 22-5-42
[illegible]-30110	Pte. McNEIL A.J.	(WNSR) No.1 C.C.D. 22-5-42
B-73126	Pte. DONAGHEY R.A.	(48th) No.15 C.G.H. 17-5-42
A-4408	Pte. RUSSELL E.	(RCR) No.1 C.C.D. 22-5-42
G-53503	Pte. ROGERS W.B.	(CYR) No.2 C.M.C. 22-5-42
C-5373	Pte. WHITE T.	(HPE) No. 1 C.C.D. 22-5-42
A-4225	Pte. SHIELDS H.	(RCR) No15 C.G.H. 23-5-42
K-52883	Pte. PITHICK H.	(SH OF C) No.1 C.G.H. 23-5-42
G-17981	Pte. DAWSON C.	(A Wing) No.2 C.M.C. 23-5-42
G-17820	Cpl. SAVAGE E.	(CYR) No.14 C.G.H. 23-5-42
G-17040	Pte. POLK J.	(CYR) No.14 C.G.H. 23-5-42

20. AMENDMENTS HOSPITAL DISCHARGE

F-40077 Pte. RUSHTON G.	(CYR) D.O. 118 dated 21 May 42 para 6 insofar as it relates to the n/n is amended to read "WNSR".

21. ABSENT WITHOUT LEAVE

F-38642 Pte. CALLAGHAN J.	(WNSR) A.W.L. from 2200 hrs. 11 May 42 and still absent after 8th day.
A-2011 Cpl. FITCH W.	(CYR) A.W.L. from 1300 hrs. 21 May 42.
R-53430 Pte. GODFREY G.E.	(SH OF C) A.W.L. from 1530 hrs. 10-5-42 and still absent after 8th day.
G-32035 Pte. HUMPHREY R.F.	(CYR) A.W.L. from 1810 hrs. 11 May 42 and still absent after 8th day.
E-4593 Pte. OUELLETTE L.P.	(R22eR) A.W.L. from 0600 hrs. 30 Apr 42 still absent after 21 days. on 21/5/42

22. AMENDMENTS ABSENT WITHOUT LEAVE

R-4433 Pte. PAYETTE D.	(A Wing) D.O. 118 dated 21 May 42 Para 8(b) insofar as it relates to the n/n is hereby cancelled.
R-4216 Pte. BAUDREAU J. E-5886 Pte. HATTE J.A.	(R22eR) (R22eR) D.O. 113 dated 16 May 42 para 17 insofar as it relates to the n/n is hereby cancelled.

NO. 1 CANADIAN DIVISION INFANTRY
REINFORCEMENT UNIT
PART II DAILY ORDERS
SHEET SIX

LAST ORDER NO. 120		THIS ORDER NO. 121
[illegible] MAY 42		25 MAY 42

[illegible] BRAVE OF ABSENCE

C-4207 PSM O'GORMAN J.K.	(A Wing) (2P)(FTW) from 23-5-42 to 30-5-42
K-2551 A/A/S/Sgt. MORGAN W.C.	(A Wing) (4P)(FTW)
F-40491 A/Cpl. LUCAS E.A.	(WNSR) (3P)(FTW)from 24-5-42 to 1-6-42
A-20270 Pte. JAQUES A.	(UHQ)(4P)(FTW)
C-5142 Pte. SMITH F.J.	(HPW) (1P)(FTW)
E-4078 Pte. DESLISLE H.L.	(R22eR)(5P)(FTW) from 25-5-42 to 1-6-42.

[illegible]. APPOINTMENTS AND PROMOTIONS

K-53444 Pte. GAWTHORN W.J.	(SHOFC) to be L/Cpl. with pay w.e.f. 12 Dec. 41.
K-[illegible]329 A/Cpl. PALMER C.	(PPCLI) promoted to A/Sgt. with pay w.e.f. 24-5-42 while attending course No. 914 Ser. 8 (P.T.).

[illegible]. REVERSIONS

B-[illegible]6045 A/Cpl. LAPIERRE O.	(A Wing) reverts to rank of Private on returning from course w.e.f. 23 May 42.

27. QUALIFICATIONS

A-3792 A/Cpl. DAVIDSON J.B.	(A Wing) having attended CMHQ Course No. 803 Ser. 13 is now shown to have Qualified "Q2".
D-106045 A/Cpl. LAPIERRE O.	(A Wing)
B-74302 Cpl. KERR J.W.	(A Wing) having attended CMHQ Course No. 814 Ser. 10 are now shown [illegible] qualified "Q1".

28. TRADESPAY

A-4146 Pte. VOWLES E.F.	(A Wing) ceases to draw trades pay Group B Shoemaker w.e.f. 21 May 42 on ceasing to be employed.
P-22226 Pte. KAPANSKI T.	(A Wing) to draw tradespay Class C as Clerk w.e.f. 19-2-42.

29. AMENDMENTS TRADESPAY

C-4290 Pte. KLEINSTUBER H.B.	(A Wing) D.O. 120 dated 23 May 42 para 20 insofar as it relates to the m/n is amended to read "w.e.f. 17-12-41".

30. POSTINGS

P-22226 Pte. KAPANSKI T.	(PPCLI) posted from R.E. PPCLI Coy to P.E. A Wing as Clerk w.e.f. 19-2-42.

NO. 1 CANADIAN DIVISION INFANTRY
REINFORCEMENT UNIT
PART II DAILY ORDERS
SHEET SEVEN

LAST ORDER
NO. 120
[illegible] MAY 42

THIS ORDER
NO. 121
25 MAY 42

[illegible] PUNISHMENTS

G-17405 Pte. McNALLY S.F.	(CYR) was on 22-5-42 awarded 14 days C.B. and ordered to forfeit 14 days pay for W.O.A.S. A.W.L. from 2359 hrs. 16-5-42 to 2215 hrs. 20-5-42 (3 days 22 hrs. 16 mins). Forfs 4 days pay FRI 149 (1)(a) Forfs 14 days pay FRI 149 (2) Total forf. 18 days pay.
G-14090 Cpl. HARGAN J.M.	(CYR) was on 22-5-42 reprimanded for WOAS A.W.L. from 2200 hrs. 20-5-42 to 0650 hrs. 21-5-42 (8 hrs. 50 mins) Forfs 1 days pay FRI 149 (1)(a).
G-18042 Pte. McINTOSH M.	(CYR) was on 22-5-42 awarded 15 days detention for W.O.A.S. AWL from 2200 hrs. 14-5-42 to 2200 hrs. 19-5-42 (5 days) Ordered to pay 14S and 9d representing const s of apprehension. Forfs. 5 days pay FRI 149 (1)(a) Forfs 15 days pay FRI 149 (1)(b) Total forf. 20 days pay.
[illegible]-2392 Pte. HUBBARD S.P.	(SH OF C) was on 12-5-42 ordered to forfeit 2 days pay For WOAS AWL from 2200 hrs. 11-5-42 to 0830 hrs. 12-5-42 (10 hrs. 30 mins) Forfs 1 days pay FRI 149 (1)(a) Forfs 2 days pay FRI 149 (2) Total forf. 3 days pay.
K-52302 Pte. HACKWOOD H.J.	(SH OF C) was on 14 Apr. 42 convicted by the General Quarter Sessions, Winchester on charges of housebreaking and theft and sentenced to eighteen months imprisonment in H.M. Prison Winchester. This sentence is to run concurrently with sentence award on 7 Feb. 42 . Forfs. 434 days pay FRI 149 (1)(b).
[illegible]-16225 Pte. GENSORICK F.	(PPCLI) was on 14 Apr. 42 convicted by the General Quarter Sessions, Winchester on charges of housebreaking and theft and sentenced to twelve months imprisonment in H.M. Prison Winchester. This sentence to run concurrently with sentence awarded on 27 Jan. 42. Forfs 260 days pay FRI 149 (1)(b).

[illegible] HOSPITAL STOPPAGES

G-17242 Pte. CRAWFORD L.R.	(CYR) placed under stoppage of pay at the rate of 75¢ per diem while in hospital from 6 Jan. 42 to 22 Jan. 42 inclusive under FRI 222 (1)(b)(ii) (Record Purposes only).

[illegible] MARRIAGES

C-5752 Pte. ROBERTS E.	(HPE) having been granted permission to marry was married to Miss Louisa Margaret Barnes at Godalming w.e.f. 23-5-42 Cert. 032940.

[illegible] 2.6.42 Ex "D"

NO. 1 CANADIAN DIVISION INFANTRY
REINFORCEMENT UNIT
PART II DAILY ORDERS
SIERRA EIGHT

LAST ORDER
NO. 120
[illegible] MAY 42

THIS ORDER
NO. 121
23 MAY 42.

37. CHANGE OF NEXT OF KIN

B-3752 Pte. ROBERTS E. (HLP) To- Mrs. L.M. Roberts (Wife) 49 Shackstead Rd. Godalming Surrey. HMC.

38. CHANGE OF AGE

A-4506 Pte. TWOCOCK E.F. (HCR) Change date of birth from 17 Jul 1922 to 19 Jul. 1925. All documents to be amended accordingly. (Auth- HEC/A/506 dated 22 May 42.

39. CHANGE OF MEDICAL CATEGORY

B-106051 Pte. BEAUDRY A. (R22eR) having been medically reboarded is placed in category E for return to Canada (Auth- D.G. 67 dated. 20 May 42 No.1 C.N.E.T.D.).

[illegible]-[illegible]0810 Pte. STEVES J. (A Wing) having been medically reboarded is placed in category C2 w.e.f. 7-5-42. (Auth- MFD 227 dated 19 May 42.).

[illegible]-29699 Pte. GLABAIS E.F. (WWSR) having been medically reboarded is placed in Cat. E for return to C.N. (Auth-SMO A Group CHU D/24 May 42.).

[illegible]-[illegible]2359 Pte. HENDERSON A.C. (A Wing) having been medically reboarded is now placed in Cat. E for return to C-n (Auth SMO A Group CHU D/ 24 May 42.).

G-5662 Pte. INGLIS A. (HPL)
[illegible]-060 Pte. MOREAU M. (R22eR) having been medically reboarded are now shown as Cat. E for return to C-n (Auth-SMO A Group CHU D/ 22 May 42.).

40. REMISSION OF SENTENCE

G-5169 Pte. BOOKOUT N. (HPL) granted 57 days remission with pay and released from detention w.e.f. 22 May 42.

[illegible]-16290 Pte. ELBERTON S. (Edm.R) granted 60 days remission with pay and released from detention w.e.f. 23 May 42.

G-17251 Pte. WELCH D.L. (CYR) granted 46 days remission with pay and release from detention w.e.f. 23 May 42.

41. AMENDMENTS REMISSION OF SENTENCE

B-4675 Pte. WILSON R. (R22eR) D.O. 118 dated 21 May 42 para 15 insofar as it relates to the m/n is amended to read "granted remission of 121 days with pay and released from detention w.e.f. 18-5-42."

F-40117 Pte. BOWLES A. (WNSR) D.O. 111 dated 14 May 42 para 19(a) insofar as it relates to the m/n is amended to read. "Granted 38 days remission with pay".

42. RELEASE FROM CIVIL PRISON

B-909 Pte. PAQUETTE M. (R22eR) released from H.M. Prison, Stafford w.e.f. 23 May 42.

NO. 1 CANADIAN DIVISION INFANTRY
REINFORCEMENT UNIT
PART II DAILY ORDERS
SHEET NINE

LAST ORDER NO. 120 23 MAY 42 — THIS ORDER NO. 121 25 MAY 42

SECTION "C" SPL. INC. OFFICERS

STRENGTH INCREASE

Lieut. R. OSLER — (48th) T.O.S. from 48th H. of C. w.e.f. 28 Feb. 42 (Auth- ECH/133 dated 23 Feb 42 (SOS FU DO 70 d/26 Mar 42).

AMENDMENTS STRENGTH INCREASE

D.O. 119 dated 22 May 42 para 17 insofar as it relates to 13 Officers shown is amended by adding "While on command to Wolfe Force.",

D.O. 118 dated 21 May 42 para 18 insofar as it relates to the Officers shwon therein is amended by adding "While on Command to Wolfe Force,".

SECTION "C" OTHER RANKS

AMENDMENTS STRENGTH INCREASE

D.O. 119 dated 22 May 42 para 18 is hereby amended by adding "T.O.S. while on command to Wolfe Force".

D.O. 118 dated 21 May 42 para 19 is here by amended by adding "T.O.S. while on command to Wolfe Force.".

SECTION "D" WOLFE FORCE OFFICERS

STRENGTH INCREASE

Lt-Col. A.S. PEARSON — (ES)
Major J.H. MATHERSILL — (ES)
Capt. T.E. HOGGINS — (PHC) T.O.S. from No.2 C.D.I.R.U. while on command to Wolfe Force w.e.f. 18 May 42. (Auth-DO 122 dated 23 May 42 No.2 C.D.I.R.U.).

ON COMMAND

Lieut. D.S. HARLEY — (SH OF C) On command to 3rd Bn. Wolfe Force w.e.f. 23 May 42.

Lieut. M.J. MacDOUGALL — (WINN) return from on command to 3rd Bn. Wolfe Force w.e.f. 23 May 42.

SECTION "D" OTHER RANKS

STRENGTH INCREASE

A-22185 Pte. FIGIOLA T.	(E.S.)	
A-22188 Pte. THOMPSON H.	(E.S.)	
M-11452 Pte. PETRIUK D.	(MNC)	T.O.S. from No. 2 C.D.I.R.U.
A-22863 Sgt. STAPLETON C.	(E.S.)	while on command to Wolfe
A-22883 Pte. SCHWARTZ S.	(E.S.)	Force w.e.f. 18 May 42.(Auth-
A-22869 Pte. PIRIE A.S.	(E.S.)	DO 122 d/23 May 42 #2CDIRU).

LAST ORDER
NO. 120
23 MAY 42

NO. 1 CANADIAN DIVISION INFANTRY
REINFORCEMENT UNIT
PART II DAILY ORDERS
SHEET TEN

THIS ORDER
NO. 121
24 MAY 42.

40. ON COMMAND

[illegible]047 Pte. DUFOUR E. (R22eR) returned from On Command to 4th Bn. Wolfe Force w.e.f. 23 May 42.

F-15436 Pte. WEATHERBEE L.E. (A Wing) On command to 1st Bn. Wolfe Force w.e.f. 17 May 42.

41. AMENDMENTS COMMAND

[illegible]5280 Pte. DOBR G. (PPCLI)
[illegible]16136 Pte. STEVENSON A. (PPCLI) D. O. 117 dated 20 May 42 para 17 insofar as it relates to the m/n is hereby cancelled.

Certified true copy.
5 sheets.
George [illegible]
O/c Records Capt
1. CDIRU.

[signature] Capt.
(T.J. MacArthur) Adm. Officer
No. 1 Can. Div. Inf. Reinf. Unit.

(1) I hereby acknowledge that I have been served with a true copy of the summary of evidence taken at Algonquin 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 27 day of
May, 1942. .....

(2) I hereby acknowledge that I have been served with a true copy of an additional summary of evidence taken at Algonquin Camp, Witley, Surrey, preliminary to my court-martial.

Dated at Witley, Surrey,
this ____ day of
_____, 1942 .....

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

I desire the services of Lieut Desmonts
if he is available.

Dated at Witley, Surrey,
this 27 day of
May, 1942 .....

M.F.M. 8 (A.F.B. 122)

No. E-4953 Name Ouellet, L.P. Sqn., Battery or Company — Corps R.22e R — Date of enlistment 4 Nov 39. — G.G. Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet — No. and date of last drunk 3 18 Jan 40 — 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
Guillemont Barracks	11-3-40	Pte.		A.A.40 Conduct to Prejudice- offered vio ence to superior officer.	Sgt Milville Cpl Dallaire	168 hrs Det	11.3.40	Lt.Col.P. Flynn	
Guillemont Barracks	3.5.40	Pte		A.A.40 Neglect to Prejudice- neglected to conform to instruct ions given by superior officer	L/Cpl Meaimues Pte Poirrier	7 days C.B.	6.5.40	Capt. J.C. Charlebois	
Guillemont Barracks	22.5.40.	Pte.		A.A.15(2) Failing to appear at Guard Mounting after being warned.	Cpl Duval L/Cpl Duch erepe	3 extra guards.	23.5.40	Lt. Col Flynn	
Guillemont Barracks	28.6.40.	Pte.	4	A.A.19 Drunkenness	Sgt Beaudet L/Cpl Maison Guve	7 days C.B. fined $5.00	1.7.40.	Lt. Col Flynn	

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	30.7.40.	Pte		A.A.15(1) A.W.L. from 2100 hrs 30 Jul. 40 until 2230 hrs 31 Jul40	CSM Dagenais	7 days C.B.	1.8.40.	Major LaFontaine	Forfeits 2 dayspay.
Field	5.8.40	Pte.		A.A.15(1) A.W.L. from 0530 hrs 9 Aug 40 until 1610 hrs 9 Aug40	L/Cpl Dionne	168hrs Det	12.8.40.	Lt.Col Flynn	Forfeits 5 days pay.
Field	20.8.40	Pte		A.A.15(1) A.W.L. from guard mounting at 1900 hrs 20 Aug40 until 2130hrs 21 Aug40.	Cpl Poirrier Cpl Ouiment XXXXXXXXXXX	168 hrs FP	23.8.40	Major Alias	Forfeits 2 days pay.
Field	31.8.40.	Pte.		A.A.40 Neglect to the prejudice Neglecting to obey an order.	Sgt Peloquin	168 hrs Det placed under restricted pay for 2 mths.	2.9.40.	Major Poirier	

Certified True Copy
[illegible] Capt
Officer i/c Records
No.1 C.D.I.R.U.

No. E-4953 Name Ouellette L.P. Sqn., Battery, or Company Corps R. 22e R. Date of enlistment 4 Nov39 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 500M - 8-39 (1703) H.Q. 1772-45-18

Date of last entry in Company Conduct Sheet No. and date of last drunk 3 18 Jan40 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
Louisburg Barracks	11.12.40.	Pte		(1) A.A.15(1) A.W.L. 4hrs 10 min. (2) A.A.15(2) Failinto appear on parade	Sgt Robert Sgt Miville	7 days C.B.	13.12.40	Lt O. Gauthier	
Laurentide Camp	13.12 40.	Pte	5	(1) A.A.15(1) A.W.L. from2200hrs 13 Dec40 until apprehended at 0045 hrs 24 Dec 40. (2) A.A.19 Drunkeness	Sgt Robert	Forfeits 28 dys pay. fined $1500	26.12.40.	Maj P.E. Morgan	Forfeits 11days pay.
Laurentide Camp.	27.12 40.	Pte		A.A.15(1) A.W.L. from2200hrs 27 Dec 40 until apprehended at 0300 hrs 31 Dec 40.	Sgt Gatien	7 days C.B.	2.1.41.	Maj. P.E. Bellanger	Forfeits 4 days pay.

George Quackenbush
Certified true copy: [illegible]

(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
Laurentide Camp		Pte		A.A.15(1) A.A.15(2)		60 days Det stoppages of 65-13-01	4.3.31.	F.G.C.M.	
Field	13.6.41.	Pte.		A.A.15(1) A.W.L. from night Exercises.	CSMDescoteu Cpl Masse	7 days F.P.	16.6.41.	Lt.Col. Poirier	
Field	13.6.41.	Pte.		A.A.15(2) Absent from parade	Col Boucher	2 days C.B.	13.6.41.	Capt Walin	
Field	6.7.41.	Pte.		A.A.15(1) A.W.L. from2230 hrs 6 Jul 41 until apprehended at 1845 hrs 19Oct41	CSMDesoteau Col Poitras	120 days Det.	8Nov 41	F.G.C.M.	Forfeits 104 days pay.
Algonquin Camp	1.3.42.	Pte		A.A.15(1) A.W.L. from 2359 hrs 1 Mar 42 until apprehended at 1610 hrs 5 Mar 42. CERTIFIED TRUE COPY OF EXTRACT FROM PREVIOUS ... 7 Apr.42 J.Louis McKenna Capt.	C.P.C. Col Ouerel	28 days Det.	9 Mar 42	Lt. Col H.C.Dawson	Forfeits 4 days pay.

(2 sheets)

Certified ... Officer i/c Records No. C.D.I.N.U.

STATEMENT as to CHARACTER & PARTICULARS of SERVICE of ACCUSED

E-4593 Private L.P. Ouellette, Royal 22e Reg't, No.1 Cdn. Div. Inf. Reinf. 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
Sec 40 A.A.	0	2
Sec 19 A.A.	0	2
Sec 15(1) A.A.	1	6

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 0 days in civil custody, and 10 days in military custody, making a total of 10 days in custody, of which 0 days were spent in hospital.

5. The present age of the accused according to his attestation paper is 24 years.

6. The date of his attestation specified in his attestation paper is 4 November 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 year 227 days

8. The accused is entitled to deferred pay or gratuity in respect of 1 yr. 277 dysservice.

9. The accused is entitled to reckon 1 year 277days 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.

On the 4th of March 1941, tried by F.G.C.M. for absence without leave and sentenced to 60 days detention(forfeiture 93 days pay). Released from detention 12 April, 1941 sentence having expired. Remission earned 20 days. On 8th of Nov. 1941 tried by F.G.C.M. for absence without leave and sentenced to 120 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.

George Truickshank
.....Capt.
(G. Truickshank) Officer
i/c Records.
No.1 Cdn. Div. Inf. Reinf. Unit.

Algonquin Camp,
~~day of May 1942.~~
2nd day of June 1942

LL-15 (AFRICA)

PTE OUELLETTE L-

LL-15

A-59

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 Sixteenth day of August, 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 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.

* ~~[I am unable to appoint :—~~

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

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

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

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

*Omit if not applicable.

Proceedings Reviewed 12 Sep 43 [illegible] Capt for Reviewing Officer

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.

*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.

President.

Rank.	Name.	Regiment.
Major	W. P. Steen	Carl & York R

Members.

Rank.	Name.	Regiment.
Capt	C. R. Day	West N.S.R
Capt	R. L. Esperance	R22R
Waiting Capt	C. L. Pitman	West N.S.R

*Signed [illegible] 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*)
E5782 OUELLETTE, Lionel, L/Cpl R22R	First Charge Sec 8(2) AA	Not Guilty	Not Guilty	Confirmed [illegible]
	Second Charge Sec 40 AA (Alternative)	Not Guilty	Guilty Sentence Thirty days detention with [illegible] pay [illegible] Aug 18/43 [illegible]	21 Aug 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*) :—

(Signed) [illegible] Brigadier (Signed) A.R. Bleau Major
Commanding 3 Can Inf Bde — Commencing Officer (*e*)
Carbotor Judge Adv — 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 18th day of August, 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 18th day of August 1943.

A.R. Bleau Major
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 [illegible] day of [illegible] 19[illegible].

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 special circumstances exist in which an order of 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 Twenty first day of August 1943.

[illegible] Brigadier
Confirming Officer Comd 3 Can Inf Bde

Promulgated and extracts taken in the case of E-5782 Pte Lionel Ouellette R22eR

(*a*) (Dated) 23 Aug 43 (Signed) Georges Albert Coderre Capt R22eR

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.

(23579) Wt.46179/850 50,000 2/43 A.& E.W.Ltd. Gp.698

The accused elected to be tried by a F.G.C.M.

CHARGE SHEET.

The Accused, No. E-5782 Private Lionel OUELLETTE, a soldier of the Royal 22e Regiment, Canadian Army Overseas, on Active Service, is charged with:-

1st Charge,
A.A. Sec. 8 (2)

USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER,

in that he,

in the Field, On August 11th, 1943, after having been awarded a punishment by his officer commanding, said to CSM Miville P. "Je ne fais pas de C.B." (I do not make any C.B.)

2nd Charge,
A.A. Sec. 40
ALTERNATIVE.

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field, On August 11th, 1943, after having been awarded a punishment by his officer commanding, said to CSM Miville P. "Je ne fais pas de C.B.". (I do not make any C.B.)

J.P.E. BERNATCHEZ, Lt-Col.
Commanding Officer,
Royal 22e Regiment.

In the Field,
August 14th, 1943.

To be tried by Field General Court Martial
In the Field
16 Aug 43
Commanding 3 Cdn Inf Bde
Brigadier

MEDICAL OFFICER'S CERTIFICATE

I certify that No. E-5712 Pte. Ouellette Lionel
of the Royal 22e Regiment, is FIT/~~UNFIT~~ to undergo trial by
Court-Martial.

Field
18 Aug 43

Guy Latour, Captain
Guy Latour, M.D., L.M.C.C.,
Medical Officer,
Royal 22e Regiment.

WRS

FORM OF APPLICATION FOR A COURT-MARTIAL

Regiment: Royal 22e Regt.

Station: In the Field Date: 14th Aug. 1943

Application for a FIELD GENERAL COURT MARTIAL

Sir:

I have the honour to submit Two charge(s) against

No: E-5782 Pte. DUELLETTE, Lionel

of the UNIT under my command, and request you will obtain the sanction of HIGHER AUTHORITIES that a FIELD GENERAL COURT MARTIAL may be assembled for his trial at In the field.

The case was investigated by Lt.-Col. J.P.E. Bernatchez, Captain W.G. Wells and Lieutenant C.E. Levesque, of this Unit.

~~A court of inquiry was held on~~ _____ Date

at (Station)

Proceedings Field General Court Martial
In the field Aug 13/43

Court opens 10.10 hrs.
Form of assembly read.
Q. Do you object to being tried by Any Particular Member of this Court Martial.
A.- No.

The Court and interpreter are duly sworn.
The Charge sheet was read and the accused pleads NOT GUILTY to both charges.
Prosecution advises accused elected trial by F.G.C.M.

PROSECUTION begins.

1 st Witness
P 48710 C.S.M. Mireille P. having been duly sworn states.
" I am P 48710 CSM Mireille P, R22eR. belonging to C Coy.
Q: Can identify the accused.?
A: Yes sir; he is Pte Ouellette J.
Q. Will tell the court what happened on the 11th August 1943 concerning Ouellette?
A: On the 11th of in the morning, I paraded Pte Ouellette for the office on a charge of insubordination, Pte Ouellette was awarded seven days C.B by the C.O. of the Coy. I brought Pte Ouellette in front of the office and I told him he had seven days C.B. to do.

He answered me ;" C.B. ~~wd~~ I will not do"
Then I said to him to go and to do his C.B.
like the others. He answered back again that
he would not do his C.B. He asked me to be
paraded to the C.O. of his coy. I asked him for
the reason. He answered me : "It is to have
the C.B. I have been given taken off." The
Commanding officer of the Coy heard the conversa-
tion and he told me ;" He will make his C.B. and
he will be paraded afterwards."

Q: Did he repeat anything after that:

A: He answered me ;" It is my right to be paraded
when he wanted to be paraded.

Q: When Ouellette answered to you did he answered
to you in an insubordinate manner?

A: He answered me in an insubordinate manner.

Cross. Examination by the defence.

Q.: Could I have from C.S.M. Miville, what he
understands by insubordinate manner in
the manner that Ouellette answered you!

A: I ~~told him to~~ To start with I told him twice
to go away, he answered : " I dont want to go,
I want to be paraded ". He did not keep his place
in the ranks, he was coming towards me, saying
he wanted to be paraded.

Q. Do you consider it to be an insubordination saying to you that he wanted to be paraded

A: Yes, sir, because in the first thing he left his rank and he advanced towards me ~~[illegible]~~ in an insubordinate manner.

Q. Did you gave him the order to take his place in the ranks.

A: I told him to fall in with the others and to keep quiet.

Q. Did Ouellette entered in the ranks?

A: He did entered the ranks when the escort arrived.

Q: What was the charge of insubordination that you made against Pte Ouellette.

A: It was on the supper parade, Pte Ouellette was talking in the ranks, and I told to keep quiet, and to take his place like the others. He answered me "I am with the others." The day before I had put him under open arrest and I did not pass him to the office. The reason we were moving and we did not have the time to make any office that day. ~~I to~~ And then I told him: "I gave you a chance, yesterday," and you want have one every day. He answered me: "the office I am ~~to~~ not scared of that. You can put me for office. I do not care." I ordered him again to keep quiet and he ~~[illegible]~~ kept on talking. I told him to take his supper and go away. ~~[illegible]~~ And then I put him open arrest. He answered to me

"You can put me close arrest if you want." I told him to keep quiet another time." And it was for nothing to talk to him. I put him under two escorts and I kept him the coy lines, because there was no detention at the time of the charge. It was on the next morning that I passed to him to the office.

Q. Did you say to Pte Ouellette in your conversation with him: "Ferme ta Crisse de gueule, espece d'idiot" (Shut your goddam trap, you idiot)

A. No.

2ND WITNESS FOR PROSECUTION.

£ 45578 A/SGT Trepanier F, R22eR., having been duly sworn states:

I am £ 45578 A/SGT. Trepanier F, R22eR, belonging to C Coy.

Q. Can you identify the accused.

A: Yes. He is Pte Ouellette J.

Q. Will you relate to the court what happened on the 11th of August 1943 concerning Pte Ouellette?

A: On the 11th of August I was present at the coy office when Pte Ouellette was punished with seven days C.B. on a charge of insubordination. I was going out of the office, Pte Ouellette said that he would not do any C.B. and asked to be paraded. the O.C. of the Coy, who was in his office heard what Pte Ouellette was saying, told to the C.S.M. to tell Pte Ouellette to do his punishment in the first place and then he would be paraded afterwards. C.S.M. Mirable said to Pte Ouellette to go and do his C.B. and he would be paraded after. Pte Ouellette answered in a subordinate manner: "I do not do any C.B." the C.S.M. Mirable placed Pte Ouellette under arrest. That is all I know in the cause of Pte Ouellette.

U.A. Stein
Major

Cross examination by the defence

Q. What do you mean by insubordinate language

A: What ~~he~~ means, ~~the~~ is that he answered ~~in~~ with an impolite accent towards a superior officer.

Q. Were the words or the accent that were impolite

A: the accent was impolite and Pte Ouellette answered in a decided manner that he would not do any C.B.

Q. Did Pte Ouellette advanced towards the C.S.M.

A: When he told him that he was near the C.S.M.

Q. Did advance to the C.S.M. or was he near the C.S.M.

A: All I remember is that he was near the C.S.M.

PROSECUTION IS CLOSED

Cont Q. Do you wish to bring any witness for your defence? Yes.

DEFENCE

1st Witness for Defence

C 100805 Pte Thibeault R., R22°R. having been duly sworn states

I am C 100805 Pte Thibeault R., R22°R, belonging to "C" Coy.

"Q" You were escort for the accused

"A" Yes.

"Q" What happened when ~~he~~ you came out of the office with the accused

"A" When I went came out of the office, Pte Ouellette

~~ste~~ asked. the C.S.M. to be paraded again. C.S.M. went to see the officer and came back saying to do his C.B and that he would be paraded after. That is all I heard.

Q. ~~Was that phrase "I do not do any C.B." said before the accused said "I want to be paraded to the O.C. Coy" or after "I want to be paraded to the O.C. Coy.~~

O. Did the accused say "I do not make any C.B before he said:" I want to be paraded before the O.C; or after?

A. His after that he said asked to be paraded that he said "I will not do any C.B."

Q. Did Pte Ouellette left the ranks and advanced towards the C.S.M.

A: No, sir.

Q. Did you think the way Pte Ouellette answered "I do not do any "C.B", was impolite.

A: I did ~~remar~~ not remark it was very impolite he simply I do not make any C.B, I want to be paraded.

Q. Do you think it was insubordinate or not?

A: He answered ~~con~~ correctly I want to be paraded

Q. Did you have any trouble to take Pte Ouellette as an escort

A: No.

Cross [illegible] [illegible] [illegible].

Q. When Pte Ouellette asked to be paraded again did he get out of the ranks.?

A: No.

Q. Do you say no because you don't remember or because you are sure.

A: Because I am sure.

See evidence of a the accused P 9 + 10.

2ND WITNESS for DEFENCE

By Court. The prosecutor sums up (Address marked Exhibit "A"
The defense sums up " " Exhibit "B"

The court adjourns for finding. Finds guilty of ~~[illegible]~~ Second charge.

M.F.M. 6 Produced.
A.F.B. 296 Produced.

Court asks if defense has anything as to character.
Court as if defense has statement mitigation of sentence.
marked Exhibit "C"
The sentence of the court is
Thirty days detention. ~~with loss of pay.~~

[illegible]
Presiden

Question by the Court to the Accused.

Q. You understand that if you are making a statement under oath you are liable to cross-examination by the prosecution?

A. Yes

2ND WITNESS FOR DEFENCE

E 5782. Pte Ouellette L., R22eR. having been duly sworn states:

"I am E 5782 Pte Ouellette L., R22eR. belonging to "C" Coy. For the charge of insubordination, we were in the supper parade, when Pte Racine R. E4666 was on the parade in short pants, when Sgt Trepanier asked him why he did not not have his long pants. Pte Racine answered: "Give me a chance, I just came from the office" and I said to Pte Racine: "Do not try to defend yourself you will be for office". And Pte Racine answered: "Do not be comic, it is not your business". Then C.S.M. Mirichle told me then to keep quiet. Then I asked him: "Since when cant we talk together the privates". Then he told me again to keep quiet. I answered him that he could not stop us from talking together. Then he answered in a voice rather high: "Will you shut your Christ trap, you idiot". I answered him before all the coy to take care of what he was saying that it was not a Christ's mouth that I had and that he had no right to talk to me like that, no privates. And then he told me to go in the lines with my supper.

W.P. Shea
Major

I then answered him to take me back to the line if ~~we~~ he could. ~~I~~ It is then that he detailed two escorts to take me under escort. After supper around seven o'clock he called me with the escort and the witness Sgt Nepanier to take me to the office I passed to the office. My commanding officer, without asking me if I would take the punishment or not gave me seven days C.B. I came out of the office and I asked C.S.M. Mirlle to be paraded immediately. C.S.M. Mirlle asked me what was the reason I wanted to be paraded: "I told him it was concerning my C.B." ~~then C.S.M. went to see the O.C. of the coy. When he asked~~ told me ~~to~~ "Do your C.B. and you will be paraded afterwards". then I told ~~you~~ him "you refuse to parade me." then C.S.M. went to see the O.C. of the coy. the O.C. of the coy told him ~~to~~ that Mr Ouellette will do his C.B. and be paraded after. And then I told him again: "You refused to parade me, I will not do any C.B." It is then they put me under escort. It is all the reasons for the charge of insubordination and the charge of refusing to do C.B.

Q. On what meal parade was everybody allowed to speak.

A. ~~Every body was sing~~ Yes, and we were passing section by section, and everybody was talking and it was not a coy parade.

Elected to be tried by a F.G.C.M.

Summing up: - Case of E-5782 Pte Ouellette L

A.A. Capt. VIII Para I page 135. (official)
Has awarded 7 days C.A.
Did answer in an insubordinate manner
before he asked to be reprovided.
"I will not do it" said in an insubordinate
interest in themselves and in the manner in which
they are said M.M.L. A.A. Part I
Sec 8 - p. para. 5 page 434.
Elected to be tried by a F.G.C.M.

Charles E. Lewis Jr
Prosecutor
18.8.43.

Exhibit "A"

W.P. Steen
Major

ARTICLES	Quantity per man	DEFICIENCIES	REMARKS
Case, pistol	1		
Cover, Mess tin, rect	1		Offrs only
Frog, bayonet	1		
Haversack	1		
Helmet, steel	1		
Net, helmet camouflage	1		
Pouches, Ammunition, pistol	1		
Pouches, basic	1		
Sling, rifle	2		Offrs only
Straps, shoulder, haversack	1		
Straps, supporting, web	2		
Tins, mess rect	2		
Blanket	1		
Denim trouser	1		
Denim blouse	1		
K.D. shorts	1		
K.D. long trousers	1		
Bush shirt	2		
Puttees	2		
Hosetop	1		
	2		

To be O/C

a complaint cannot legitimately be preferred to a superior officer except in the regular course defined by this section — that is to say first to the platoon and then to the C.O.

And that is what Mr Ouellette wanted to do when he wanted to be paraded again to the Captain to see the C.O. and that was refused to him.

That is the reason why he said "I do not make any C.B."

I don't see why he should be charged of insubordination or even prejudice of good order for that simple reason because it is said in Ch V para 71 that great care should be taken to

to discriminate between angry expressions & words in an outburst of momentary irritation often used violent language without intending to be insubordinate. Language therefore should be construed with due regard to all surrounding circumstances; and the intention of the user of it should be carefully considered before it is held to constitute the grave offence of using insubordinate language to a superior officer.

I do think that Ouellette answered that only in ten circumstances and that he should not be considered guilty of any of the charges laid down against him

Exhibit "C"

For Mitigation of the sentence

I would like the court to consider that Mr. Quellet fought well during the campaign and was a volunteer for a dangerous job. And also that in their finding that his crime sheet is not to bad and that he may loose quite a good amount of money Quellet thought that he had the right to come before the court and for all these reasons I hope that the court will be clement.

[illegible signature]

[illegible signature]

Summing up for defense

Exhibit "B"

WPS

A man deserves justice and a man has rights and rights are governed by law.

I would say that it is as much the fault of the C.S.M. as Quellette himself if this simple case is here to-day as shown by the evidence themselves.

That man was paraded and was condemned to 7 day C.B.

That man went out of the office and the first thing he asked was to paraded again.

It is clearly stipulated in A A Section 43 that if a man thinks himself wronged by his captain in respect of any matter he may complain thereof

SUMMARY OF EVIDENCE.

In the case of E-5782 Private Lionel OUELLETTE, a soldier of the Royal 22e Regiment, Canadian Army Overseas, on Active Service.

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

1st Witness for the prosecution.

P-48710 CSM Miville, P. Royal 22e Regiment, posted to "G" Coy.. having been duly sworn, states:-

I am P-48710 CSM Miville P., Royal 22e Regiment, posted to "G" Coy. On 11th August 1943, I paraded Pte. Ouellette L, whom I now recognize, to his Coy. Comdr., and he was awarded 7 days C.B. Coming out of the Orderly Room, I repeated to Ouellette the punishment awarded. He answered: Je ne fais pas de C.B (I do not make any C.B.) I told him to keep quiet and I added that he would have to make his C.B. like [illegible] others. He answered again he wouldn't [illegible] any C.B. and asked to be paraded again to the Coy. Comdr. I asked him for what purpose and he told me it was to have his punishment of C.B. changed. The Coy. Comdr. who had listened from inside told him he would have to make his C.B. first and then he would be paraded. I repeated these words to the accused. Then Ouellette went away saying in an insubordinate manner: Je n'en ferai pas. I then put him under arrest and a charge was laid down against him.

The accused declines to cross-examine this witness.

Miville CSM

2nd Witness for the Prosecution.

E-4578 A/Sgt. Trepanier, F. Royal 22e Regiment, posted to "G" Coy, having been duly sworn states:-

On August 11th, 1943, I was present at the Coy. Comdr.'s Orde Room, and Pte. Ouellette L., whom I now recognize, was awarde 7 days C.B. on a charge of insubordination. In coming out of the orderly room, the accused said he would not make his C.B. and asked to be paraded again. The Coy. Comdr. who had listened from inside the whole conversation told the CSM to tell him he would have to make his C.B. first, and then he would be paraded. Then Pte. Ouellette went away, and in an insubordinate manner repeated "I won't make any C.B.". The CSM placed him under arrest and a charge was laid down against him.

The accused declines to cross-examine this witness.

[illegible] A/Sgt.

The accused having been duly cautionned in French in accordance with R.O. No. 1424, reserves his defence.

I certify that the above summary of evidence was taken down by me in the presence and the hearing of the accused, and that Rules of procedure 4 (c), (d), (e), (f), and (g), were duly complied with.

In the Field.

Charles L. [illegible] Lieut.
Officer taking Summary.

NAMES OF WITNESSES FOR THE PROSECUTION AND DEFENCE IN THE CASE OF,

E-5782 Pte. Lionel OUELLETTE,
R.22e R.

PROSECUTION.

P-48710 CSM Miville, P. R.22e R. "C" Coy.

E-4578 A/Sgt. Trepanier, F. R.22e R. "C" Coy.

DEFENCE.

NIL

...fy that I have been served with a true copy of the Summary ... Evidence taken prior to my trial by Field General Court-Martial. I also acknowledge the receipt of a true copy of the Charge Sheet upon which I am being brought into Court-Martial.

I desire the services of an Officer to represent me at my trial.
I desire the services of : Capt. V.P.E. Aubert
if he is available.

[signature]

In the Field,
This ____ days of Aug. 43.

M.F.M.
(A.F.B. 122)
40/P & S/136

No. 45782 Name Ouellette S. ~~Sqn., Battery,~~ or Company "C" Corps R220R

Date of enlistment 18-6-40 G.C. Badges Service or Proficiency Pay

Signature O.C. Company, etc. [illegible] Character

Sheet No. 2

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

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
On the 13-6-42 This soldier completed two years service In accordance with R.O.H. C.A.S. the above regt'l entries were transfered from previous sheet which was then destroyed on the									
In the Field	25 oct 42	Pte		1- W.O.A.S. AA sec 40 Absent from Guard mounting from 1700 hrs 25 oct 42 till 0900 hrs 25 oct 42 thus necessiting his replacement by a comrade total 16 hrs	Cpl Lacelle S.	7 days C.B.	26-10-42		
"	6-11-42	"		W.O.A.S. AA sec 15-1 A.W.L. from 1400 hrs 6 nov 42 till 2200 hrs 8 nov 42 total 2 days 8 hrs	Cpl Lalonde B.	10 days F.P.	9-11-42		
"	25-3-43	"		Dirty rifle on parade on 25-3-43 AA sec 40	Cpl Trepanier	3 days C.B.	26-3-43		

Certified true copy
Sergent Copy
O.C. Copy
A.B. [illegible]

(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
the Field	31 may 43	Pte		W.O.A.S. sec 15 AA Overstaying his pass from 1400 hrs 31 may 43 until 2330 hrs 1 June 43 Total absence 1 day 9 hrs 30 mins	Cpl Girard T/c Levesque T/B Legare C.S.M. Miville	10 days C.B.	2 June 43	[illegible]	
" " "	10 aug 43	"		W.O.A.S. Sec 40 Insubordination to a Superior Officer	Sgt Trepanier	7 days C.B.	11 aug 43		

Certified True Copy
[illegible] Capt.
O.C. "C" Coy.

A.F.B. 296

PARTICULARS AS TO CHARACTER AND PARTICULAR OF SERVICE OF THE ACCUSED

No. E5742 Rank Name OUELLETTE, Lionel R. 22e, R.

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 of which trial has been dispensed with:

	Within last 12 months		Since Enlistment.	
For A.A.Act 40	3	times	3	times
For A.A.Act 17(r)	1	times	2	times

Number of instances of gallantry or distinguished conduct: NIL

or

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

2- The accused has not previously been convicted

or

Previous convictions of the accused by a court-martialor a civil court summary awardsunder 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 NIL beginning on the NIL day of

4- The accused has been in confinement awaiting trial on the present charges for NIL days in civil custody and 7 days in military custody, making a total of 7 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 papers~~ is 28

6- The date of his Commission attestation specified in this records of service ~~attestation papers~~ ~~is~~ is 13 June 1940

7- The service which the accused is allowed to reckon towards discharge or transfer to the reserve is NOT AVAILABLE.

8- The accused is entitled to deferred pay or gratuity in respect of NOT AVAILABLE Service.

9- The accused is entitled to reckon NOT AVAILABLE service for the purpose of determining his pension.

10- 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)~~).

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

12- (~~If the accused is 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	

SCHEDULE

of convictions by a court-martial or civil court of summary awards under Section A.A. 47 and of cases in which trial has been dispensed with of accused,

No. E-5782 Rank: PC Name OUELLETTE, LIONEL R. 22e.R.

(a verbatim extract from the regimental books relating those convictions and dispensations with trial must beinserted).

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.

[signature] Captain,
Adjutant, Royal 22e Regiment.

47-9

Ste. Ouellette N.

RECORDED AT CMHQ IN AB 160 47-9

SCHEDULE.

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

Accused: D157616 Pte Norman Ouellette R de Chaud.

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)	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)~~
~~(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 13 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 undergo Detention for a period of nine (9) months.

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

23 Jan 45 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 371(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 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) Ref.
(1. AA 57A. Delete if not used.)

Date 3 Jan 45 (Sgd) Jas A Roberts Brig
Commanding 8 Can Inf Bde Confirming Officer.

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

Accused.	Date.	Signature of Offr.
D157616 Pte Ouellette, N.	24 Jan. 45	W Hawkesworth Lt. Col

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 28 FEB 1945 REGISTRY (CMHQ)

CFA96 (in lieu of AFA3) 40-P-M-1009 (3664)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig J. A. Roberts Comd 8 C. I. B. dated 17 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) 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.
D157616	Pte.	NORMAN	Ouellette	R de Chauds

PROCEEDINGS QUASHED
Reinstated by Capt
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 23 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 19/125

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.(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 Lt. P Trempe as interpreter? Ans No

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	Fred F. Moon	N Shore R.
Member	Capt	R.M. Lavigne	R de Chaud.
Member	Lt	B.A.J McElwaine	N Shore R.
Judge-Advocate			
Prosecutor	~~Capt~~	H. Bourque	R de Chaud.
Defending Offr	Lt.	H.M. Brideau	R de Chaud.

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 D157616 Pte Norman Ouellette before arraignment make(s) (no) ~~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 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 & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. 6 erasures p. 91

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 ; *securing 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.*)

The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using

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 556. 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 that, accordingly, the trial will proceed on the ..... charge(s), and allowed on the ..... the latter charge(s).(4) The Court is re-opened, and the President announces that the submission is allowed on the ..... charge(s), and that the accused is (are) found Not Guilty on the former, but the

(1. *Delete remainder of this para, if submission not made.* 2. *Argument 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) (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 A 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 D and Ex E 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 A and Conduct Sheet A, and in mitigation of punishment ?(1) Ans Yes thank you. My 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 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 P/J 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 584. 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.* 2. *RP 50. As to release from arrest see RP 50.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

THE ACCUSED D-157616 PTE NORMAN OUELLETTE OF LE REGIMENT DE LA CHAUDIERE, A SOLDIER OF THE CANADIAN ARMY ON ACTIVE SERVICE, IS CHARGED WITH:

IST CHARGE
ARMY ACT
SEC.15(1)

WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he:

In the Field, absented himself without leave from 1400hrs on the 9th Nov 44, until apprehended by the Military Police at 1430hrs on the 9th Jan 45.
(TOTAL ABSENCE 61 DAYS 30 MINS)

SIGGED IN THE FIELD
THIS 15 OF JAN 1945

(G.O.TASCHEREAU)LT-COL,
COMMANDING,
LE REGIMENT DE LA CHAUDIERE.

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

17 Jan 45

(J.A. ROBERTS) Brig
Comd 8 Cdn Inf Bde

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 97(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.
D157616	Pte		Norman	OUELLETTE	R de Chaud

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, ~~[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.

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

~~[illegible]~~ (*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Maj	F.F. Moar		N Shore R

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	R.M. Lavigne		R de Chaud
Capt Lt	B.A.J. McElwaine		N Shore R

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Lt	~~[illegible]~~		N Shore R

JUDGE-ADVOCATE.

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

On Active Service in the Fd

in Holland (*Country.*)

Dat 17 Jan 45

Jas C Roberts (*Signed personally. RP 105 fn 2.*)

Brigadier (*Rank.*)

Commanding 8 Cdn Inf Bde 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.*)

LE REGIMENT DE LA CHAUDIERE

DATE 23 January 45

MEDICAL REPORT

I certify that I have this morning examined

No. D-157616 Rank Pte Name QUELLETTE H

and in my opinion is Fit [illegible] to undergo trial by Court-Martial.

P. Gauthier

P. GAUTHIER Capt RCAMC
M.O. R DE CHAUD [illegible]

Statement of the Defending Officer in favour of the accused D-157616 Pte Norman Ouellette

President, Members of the Court.

During his two years of service, this is the 1st offence of the accused.

The accused has been fighting with his unit since July 1944 and suddenly got discouraged and tired without thinking of going away.

In consideration of his services with his unit I am asking the consideration of the court for the mitigation of sentence

L M Expedeure Lieut.
Defending Officer.

"A"

SUMMARY OF EVIDENCE

In the case of D-157616 Pte NORMAN Ouellette of Le Regiment de la Chaudiere, a soldier of the Canadian Army on active service.

The C.O. directs that the evidence be taken under Oath.

1st Witness:- Lieut R.Rutledge T/Adjutant of Le Regiment de la Chaudiere, having been duly sworn states:-

I am Lieut R.Rutledge T/Officer i/c records Le Regiment de la Chaudiere, I herby produce the following documents relating to the accused/

1. Certified true copy of Part II Order NO 98 dated 10 Dec 44. Para 3 (j). Relating to the accused.
2. Certificate of apprehension, relating to the accused. (Accepted and marked Exhibit "A""B").

Lieut R.Rutledge T/Adjt.
Le Regiment de la Chaudiere.

The accused declines to cross examine this witness.

QUESTION TO THE ACCUSED:

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

ANSWER FROM THE ACCUSED:

"No Sir, I reserve my defence".

D-157616 Pte N. Ouellette.
Le Regiment de la Chaudiere.

I certified that this Summary of Evidence were taken down by me in the presence and hearing of the accused and that the rules of procedure 4 C/D/E/F/G have been complied with.

R.Rochon Capt.
Le Regiment de la Chaudiere.

CERTIFICATE UNDER ARMY ACT. SECTION 163 (1) (j) Exhibit "B"

Guard Room

Certified that No. D-157616 Rank Pte Name Ouellette N.

of the Regt De Chaud 3 Cdn Div. Regt, ~~surrendered to~~ No. A-35009
was apprehended by

Rank L/cpl Name Blackburn R. of the 2 Cdn L of C Prov Coy.

Ghent Detach at Ghent Belgium at 1430 hrs, on the 9

day of Jan 45 as an absentee without leave.

He was wearing Military Uniform at the time of his ~~Surrender~~ Arrest.
~~Civilian Clothes~~.

Place Ghent Belgium

Date 9 Jan 45

GHENT DET. PROV. PL.

H. W. Mahaffy
Canadian Provost Corps.
Lieut. i/c Ghent Detach
2 Cdn L of C Prov Coy. 21 Army Grp.

Exhibit C

LE REGIMENT DE LA CHAUDIERE
PART II ORDERS ISSUED BY
CANADIAN SECTION GHQ 2nd ECHELON
21 ARMY GROUP

Last Order
No 97
8 Dec 44

No 98
10 DEC 44

Page 3

3 ABSENT WITHOUT LEAVE - Cont'd

(j) AWL from 1400hrs 9 Nov 44 Still absent 1400hrs
1 Dec 44. (22nd day)
D-157616 Pte Ouellette N.

(W A Murray) Lieutenant
for Officer IC
Cdn Sec GHQ 2nd Echelon, 21 A Gp

CERTIFIED TRUE COPY

~~R.L. Boulanger~~ Capt Adjt.
Le Regiment de la Chaudiere.

D

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
D-157616	Pte	N. Ouellette	Le Regiment de la Chaudiere

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, R.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	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 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 14 days in military custody, making a total of 14 days, of which N/A days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 21 yrs - 10 months

6. The date of his ~~XXXXXXX~~ attestation specified in his ~~XXXXXXXXX~~ attestation paper is 9 April 44

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 n/a service.

9. The accused is entitled to reckon n/a 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*)). CUSM 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 n/a dated _____

(*25800) Wt.24898/1730 20,000 12/43 A.& E.W.Ltd. Gp.695
(25900) Wt.55984/1499 12,000 3/44 " "

NoD-157616 Name N. OUELLETTE | Sqn, Battery, or Company | Corps C.I.C. | Date of enlistment 9 April 04 | GC Badges | Service or Proficiency Pay E | AFM 6 (AFB 122) 40/T48/136 (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 | 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
				Temporary Sheet Original has been sent to 3rd Echelon					
				Certified True Copy H. Appleby Capt T. Affairs i/c Records					

(PTO)

HHH-139

PTE OUELLETTE P.E

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 Twenty-third day of March, 19 44

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; * [redacted] "G" 95

*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.

* [redacted] "G" 95

for the purpose [redacted]

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 rank, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Name: R J Orr — Regiment: Carlt & York R

Members.

Rank.	Name.	Regiment.
Major	J M Bursey	Carlt & York R
Captain	Y Dube	R 22e R
Captain	A Fortin	R 22e R
Lieut		

Waiting

*Signed "T.G.Gibson" Brigadier

Commanding 3 Cdn Inf Bde. Convening Officer.

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

"R.J.O."

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)
E57725 Pte Paul-Emile OUELLETTE, Royal 22e Regiment.	First Charge Sec 12 (1) (a)	not guilty	Guilty	I reserve confirmation of the finding and sentence for superior authority "T.G.G." 26 Mar 44.
	2nd Charge Sec 9 (2)	Guilty	Guilty To undergo penal servitude for a period of five (5) years. "R.J. Orr"	I confirm the findings and sentence but I remit two years penal servitude. I direct that a part of the sentence not exceeding 2 years shall be served in a military prison. (sgd) R.J. Montague Maj - Gen Major - General IC Administration Canadian Military Headquarters 19 Apr 44

* 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.G. Gibson" Brigadier. (*Signed*) "R.J.Orr" Major

Commanding 3 Cdn Inf Bde. *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.

10
20
40

16
21 mar

RECORDED AT CMHQ IN AB 160 HHH-129

XLRPG V LRIZ SER 90

FROM CANMILITARY 201500B

TO CDN O2E AAI

A2640 BT

RESTRICTED PARA 1 ALL FGCM PROCEEDINGS MENTIONED HEREIN RECEIVED 17 APR 44 ENDORSED BY MGA 19 APR AS FOLLOWS

PARA 2 REF E23552 BARRETTE E48485 BOUDREAU D137492 LA VALLE F89027 MCNEIL E42153 MICHAUD E5597 ROBITAILLE E100631 TAPP ENDORSED QUOTE I CONFIRM THE FINDINGS AND SENTENCE AND I DIRECT THAT A PART OF THE SENTENCE NOT EXCEEDING 2 YEARS SHALL BE SERVED IN A MILITARY PRISON UNQUOTE (.) PHYSICAL CONDITION ROBITAILLE TO BE INVESTIGATED

PARA 3 REF D58511 LAMBERT G49997 MARTIN G17547 TRAVERS ENDORSED QUOTE I CONFIRM THE FINDINGS AND SENTENCE AND I DIRECT THAT A PART OF THE SENTENCE NOT EXCEEDING 2 YEARS SHALL BE SERVED IN A MILITARY PRISON (.) UNQUOTE(.) TRAVERS WILL BE EXAMINED BY MEDICAL BOARD BEFORE UNDERGOING SENTENCE (.)

PARA 4 REF E42091 LAPOINTE ENDORSED QUOTE I CONFIRM THE FINDING AND SENTENCE BUT I REMIT ONE YEAR PENAL SERVITUDE (.) I DIRECT THAT A PART OF THE SENTENCE NOT EXCEEDING TWO YEARS SHALL BE SERVED IN A MILITARY PRISON UNQUOTE

PARA 5 REF D163119 OLIGNY ENDORSED QUOTE I CONFIRM THE FINDINGS AND SENTENCE BUT REMIT ONE YEAR PENAL SERVITUDE AND I DIRECT THAT A PART OF THE SENTENCE NOT EXCEEDING 2 YEARS SHALL BE SERVED IN A MILITARY PRISON UNQUOTE

PARA 6 REF G23263 CLARKE ENDORSED QUOTE I CONFIRM THE FINDING AND SENTENCE BUT REMIT 2 YEARS PENAL SERVITUDE AND I DIRECT THAT A PART OF THE SENTENCE NOT EXCEEDING 2 YEARS SHALL BE SERVED IN A MILITARY PRISON UNQUOTE

PARA 7 REF D150148 LEONARD E57725 OUELLETTE ENDORSED QUOTE I CONFIRM THE FINDINGS AND SENTENCE BUT I REMIT TWO YEARS PENAL SERVITUDE(.) I DIRECT THAT A PART OF THE SENTENCE NOT EXCEEDING 2 YEARS SHALL BE SERVED IN A MILITARY PRISON UNQUOTE

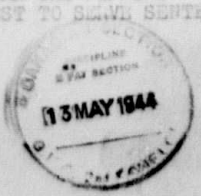
PARA 8 REF G49702 RICHARD ENDORSED QUOTE I CONFIRM THE FINDINGS AND SENTENCE BUT REMIT 1 1/2 YEARS PENAL SERVITUDE(.) I DIRECT THAT A PART OF THE SENTENCE NOT EXCEEDING 2 YEARS SHALL BE SERVED IN A MILITARY PRISON UNQUOTE

PARA 9 REF D106052 DAOUST ENDORSED QUOTE I CONFIRM THE FINDINGS BUT (.) COMMUTE THE SENTENCE TO READ QUOTE TO UNDERGO IMPRISONMENT FOR 2 YEARS UNQUOTE AND I CONFIRM THE SENTENCE AS SO COMMUTED UNQUOTE(.) SENTENCE FOR AWL AA 15 CANNOT EXCEED IMPRISONMENT

PARA 10 REF E10528 BLAIS ENDORSED QUOTE I CONFIRM THE FINDING AND SENTENCE UNQUOTE (.) RETURN BLAIS UK EARLIEST TO SERVE SENTENCE

BT 202235 MJT A.2

R SRL 90 202236 NAB KK



CANADIAN SECTION
SPECIFLINE
E PAI SECTION
13 MAY 1944
G.I.C. 2nd COMPLEX

CHARGE SHEET

The accused E57725 Private Paul - Emile OUELLETTE, a soldier of the Royal 22e Regiment, Canadian Army Overseas, CMF, on Active Service, is charged with:-

1st Charge
AA Sec 12 (1) (a)

WHEN ON ACTIVE SERVICE
DESERTING HIS MAJESTY'S SERVICE

in that he

In the Field, on 15 Feb 1944 when under orders to proceed to the front line into a defensive position, absented himself without leave from approximately 1900 hrs 15 Feb 1944 until 0900 hrs 16 Feb 1944 with intent to avoid so proceeding.

2nd Charge
AA Sec 9 (Z)

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

in that he

In the Field, on 17 Feb 1944, when ordered by Major J.G. Charlebois, R 22e R to join his coy in the front line did not do so saying "My nerves can't stand it any more" or words to that effect.

In the Field
8 Mar 1944

"J.G. Charlebois"
(J.G. CHARLEBOIS), Major
T/Commanding Royal 22e Regiment

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
23 Mar 44

B.2

"R.J.O"
Major

"T.G.Gibson"
(T.T.GIBSON) Brigadier
Commanding 3 Cdn Inf
Bde

MEDICAL OFFICERS CERTIFICATE

I certify that I have this morning Examined No B57725 Pte Ouellette P.E. R 22e R and in my opinion he is fit to undergo Trial by Court Martial.

Station In the Field

Date 24 March 1944

"C.B. Caswell Capt"
Medical Officer

"R.J. Orr"
Major

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

A

Army Form A 9

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

Proceedings of a Field General Court-Martial held at Field on the 24th day of March 19 44 by order of Brigadier T.G. Gibson

Commanding 3 Cdn Inf Bde.

dated the 23rd day of March 19 44

President.

Major R.J. Orr. Carlt & York R

Members

Capt J.M. Bursey Carlt & York R

Capt Y. Dube R 22e R

, ~~Judge Advocate~~

Trial of* E 57725 Pte Paul Emile Quellette, R 22e R

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

"RJO" ~~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 & 23.~~

The accused is brought before the Court.

Prosecutor,† Lieut F.S.J. Hogan R 22e R

Counsel‡ or defending officer† Lieut A Fortin R 22e R

At 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.* No

"RJO" (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.

30057 WLW4162021 10,000 sets 12/41 R. & H., Ltd. G657/11 Form A9/55

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 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 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.

"RJO"

The accused having pleaded Guilty to the second 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.

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.

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. D-63280 L/Sgt Gedbois Q.

being duly sworn, is examined by the prosecutor.

Q.1. L/Sgt Gedbois, will you tell the court how and when Pte Ouellette F.E. absented himself.

A. 1. At around 1000 hrs on the 15th Feb 1944, I told my Platoon that we were to move to the front line. Around 1800 hrs I made a roll call of my platoon, and found that Pte Ouellette was absent. I then reported him as A.W.L. to Sgt Lefebvre, acting CSM.

Q. 2. When you warned your platoon at 1000 hrs was Pte Ouellette present?

A.2. Yes, sir, he was present.

Q.3. When did you see Pte Ouellette after that.

A.3. I hadn't seen since, until I saw him in detention.

2nd Witness: D-150028 L/Cpl Gorman R having been duly sworn is examined by the prosecutor.

"RJO"

C 2

Q.1. Will you tell the court what you know in the case of Pte Ouellette P.E..

A.1. On the 15th of Feb 1944 at around 1830 hrs I found that Pte Ouellette P.E. was absent without leave I had warned him at 1700 hrs that we were movingup to the front line into a defencive position where we were about to move at 1930 hrs Pte Ouellette P.E. was not present. I immediately reported his absence to Sgt Gadbois.

Q.2. When did you see Pte Ouellette P.E. after that.

A.2. I saw him when he was in detantion, when I went to give evidence.

Cross examination by Defending Officer

Q.1. Did you warn the accused yourself ?

A.1. Yes, Sir.

Q.2. Which words did you use to warn him.

A.2. I told him to get ready that we were going to the front line.

Q.3. Was that on a parade.

A.3. No Sir

Q.4. Where was he?

A.4. With the rest of the paltoon we were assembled to eat.

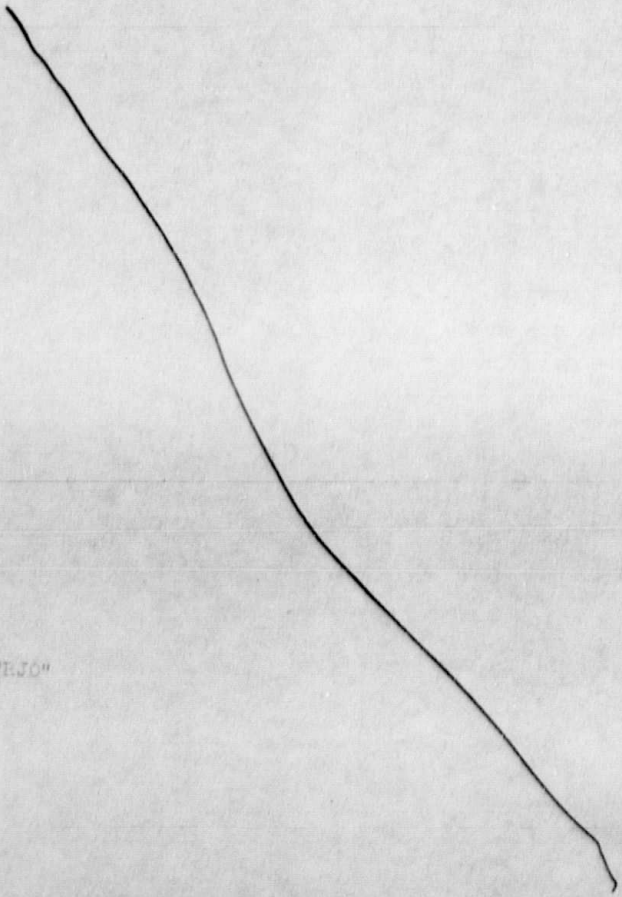
3rd Witness: E-5298 L/Cpl Evard F. having been duly sworn is examined by the Prosecutor.

Q.1. Will you tell the court what you know in the case of Pte Ouellette P.E.

A.1. At "B" Echelon, at 0900 hrs on the 16th

"RJC"

Feb 1944, Pte Ouellette came and reported to me, telling me he had left the front line on the proceeding evening, I brought him at rear Battalion H.Q. to be paraded in front of Major Charlebois.



"EJO"

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.* N/A

INSTRUCTIONS TO T[redacted]

(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 did not go back with the intention of doing wrong, and had no intention of leaving his Majesty's Service. When I was told that we were to move my nerves simply went down. The witnesses havent proved that I was a deserter but but simply that I was absent without leave, and I gave myself up to the Military Police.

"R.J.O"

Instruction. † 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*.)

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 B57725 Pte Paul Emile Ouellette is found guilty of the second charge as laid

"BJO"

†[The summary ~~(or abstract)~~ of evidence is read, marked E 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

Answer. 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.]

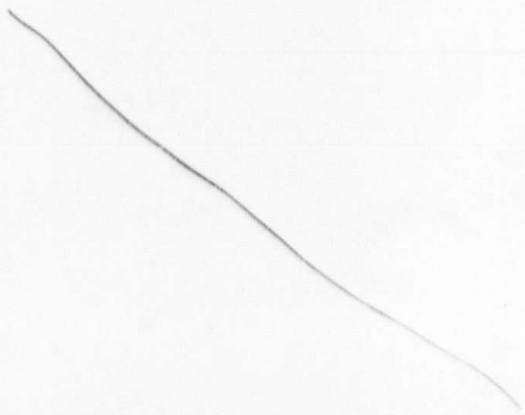
I enlisted on the 16th of March 1942, and since then have been paraded only twice on light charges. I never went to detention before.

"BJO"

Instructions.

† 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.



"EJO"

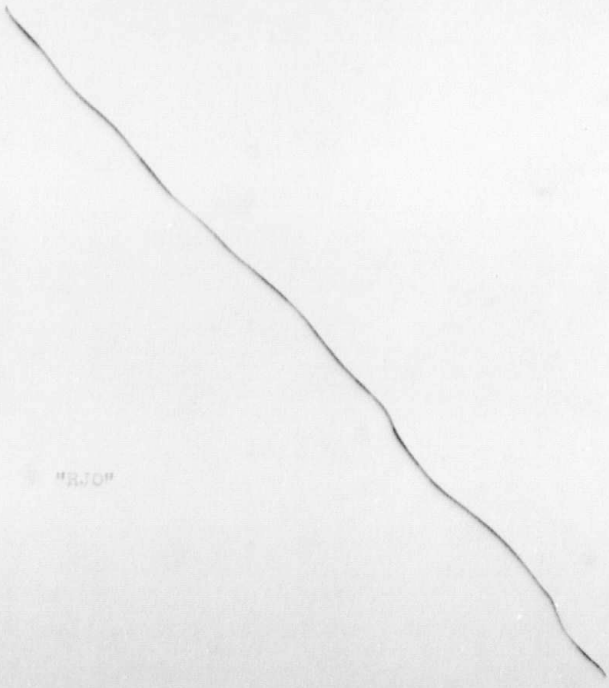
Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

No

Answer.

Evidence as to character



"EJO"

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

Guilty of the first charge as laid

"RJO"

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 FSJ Hogan R22eR 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

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked C & D 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.* No

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.* N/A

Cross-examined by the accused. No

[Instructions.—If in respect of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any additional punishment 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 the additional punishment.]

Question to the accused. Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

"RJO"

F

Sentence

Sentence.

The Court sentence the accused E 57725 Paul Emile
GUELLETTE
to undergo penal servitude for a period of five years.

"R.J. Orr" Major.

"RJOrr"

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 24th day of March 1944, 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 24th day of March 19 44.

"R.J.Orr" 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

"R.J.O.

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.~~) P.J.O.

*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 19th day of April 1944.

Lgd. P. J. Montague. Maj. Gen.
Major General IC Administration
Canadian Military Headquarters

Confirming Officer.

Promulgated and extracts taken in the case of E 57725 Pte. Ouellette, P.E. R.22 R

(a) (Dated) 30 Apr 44. (Signed) [illegible] Ass. Dept. R.22 R

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.

(20704) Wt.47580/242 26,000 2/42 A.& E.W.Ltd. Gp.698
(21785) Wt.19088/1359 40,000 7/42 " "

HK 151.

Plé. ~~Ouellette~~ R.

SCHEDULE.

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

Accused: C10633 Pte Rolland OUELLETTE - Wpg Gren - 3 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 15(1)	GUILTY	GUILTY	
2nd AA Sec 15(1)	"	"	
3rd AA Sec 15(1)	"	"	
4th AA Sec 22	"	"	
5th AA Sec 15(1)	"	"	
6th AA Sec 40	"	"	
7th AA Sec 40	"	"	

(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~~ ~~(delete if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)~~ beginning on (date) (1)

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 nine (9) months and to be put under stoppages of pay until he has made good (1) £0-14-5 and (2) £0-14-5 cost (3) £3-8-7 + expenses of his return to this unit

27 Dec 44 (Sgd) [illegible] President. (RP 45, 50.)

Date awarded.

(Sgd) 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:

Confirmed

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

(Sgd) R.G. Blackader Brig

Date 30 Dec 44 Commanding 18 Cdn Inf Bde

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

Accused.	Date.	Signature of Offr.
C10633 Pte Rolland OUELLETTE	Promulgated 3 Jan 45	(E.T. Stewart) Capt
	Extracts Taken DO 5 d/5 Jan 45	Adjutant 3 Cdn Inf Dep Bn

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160

HK-151

CFA96 (In lieu of AFA8) 40/P & B/1668 (6144) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brigadier K G Blackader DSO, MC, ED Comd 13 CITB dated 22 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.
C10633	Pte	Rolland	OUELLETTE	Wpg Gren 3 CITR

PROCEEDINGS REVIEWED 17 JAN 45 LEGAL STAFF OFFICER JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date) 27 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assembled, 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 50, 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(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 1500 hours trial commences.(1)

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.(1)~~

(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 ~~No~~

~~The Interpreter is sworn.(1)~~ Do you object to 228126 Sgt Att 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 (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. KEDMAN	HQ CRU
Member	CAPT	W.H. FLEMING	4 CCD
Member	LT	J.S. GARDHAM	4 CCD
~~Judge Advocate~~			
Prosecutor	LT	F. BERTRAND	3 CITR
Defending Offr	LT	A.C. NARD	3 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 89 (B) and fn 2 were not followed. See DI p 33.)

A8. The accused before arraignment make(s) (no) (~~of~~ 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 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 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 Pre 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 ch ge(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. 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. YES, I HAVE NOTHING.(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* 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, C10633 Private Rolland OUELLETTE, 1 Battalion Winnipeg Grenadiers, on the strength of No 3 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE — WHILE ON ACTIVE SERVICE, Absenting himself without leave,

Section 15 (1) Army Act

in that he,

In the Field, absented himself without leave from 2200 hours 11 September 1944 until apprehended by the Canadian Provost Corps at Manchester at 1100 hours 26 September 1944, thereby incurring the cost of returning him to his Unit in the amount of £0-14-8. Total absence 14 days, 13 hours.

SECOND CHARGE — WHILE ON ACTIVE SERVICE, Absenting himself without leave,

Section 15 (1) Army Act

in that he,

In the Field, absented himself without leave from 0640 hours 29 September 1944 until surrendering himself to the Civil Police at Bolton Borough at 0735 hours 25 October 1944, thereby incurring the cost of returning him to his unit in the amount of £0-14-8. Total absence 26 days, 55 minutes.

THIRD CHARGE — WHILE ON ACTIVE SERVICE, Absenting himself without leave,

Section 15 (1) Army Act

in that he,

In the Field, absented himself without leave from 0830 hours 5 November 1944 until 1800 hours 17 November 1944. Total absence 12 days, 9 hours, 30 minutes.

FOURTH CHARGE — WHILE ON ACTIVE SERVICE, When in confinement, Escaping,

Section 22 Army Act

in that he,

In the Field, in the Unit Guard Room, 3 Canadian Infantry Training Regiment, at approximately 1920 hours 23 November 1944, escaped, while waiting Field General Court Martial.

FIFTH CHARGE — WHILE ON ACTIVE SERVICE, Absenting himself without leave,

Section 15 (1) Army Act

in that he,

In the Field, did absent himself without leave from 1920 hours 23 November 1944 after escaping from unit Guard Room 3 Canadian Infantry Training Regiment until apprehended at 1845 hours 9 December 1944 in Glasgow by the Canadian Provost Corps, thereby incurring the cost of returning him to his Unit in the amount of £3-8-7. Total absence 15 days, 23 hours, 25 minutes.

SIXTH CHARGE — WHILE ON ACTIVE SERVICE, Conduct to the Prejudice of Good Order and Military Discipline,

Section 40 Army Act

in that he,

In the Field, when apprehended by the Canadian Provost Corps in Glasgow at 1845 hours 9 December 1944 was not in possession of his MBM 1 Part I, II and III.

SEVENTH CHARGE

Section 40
Army Act

WHILE ON ACTIVE SERVICE, Conduct to the Prejudice of Good Order and Military Discipline,

in that he,

In the Field, when apprehended by the Canadian Provost Corps in Glasgow at 1845 hours 9 December 1944, stated a falsehood.

(S.W. Thomson) Lt-Col.,
A/Commander
No 3 Cdn Inf Trg Regt.

IN THE FIELD
20 December 1944

To be tried by Field General Court Martial.

(K G Blackader) Brig
Comd
13 Cdn Inf Trg Bde

In the Field
22 Dec 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.
C10633	Pte		Rolland	OUELLETTE	Wpg Gren 3 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 [illegible] committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 22 Dec 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.

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

[illegible]
(*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		4 CCD
Lieutenant	to be detailed by Commanding Officer		4 CCD

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Captain	to be detailed by Commanding Officer		3 CITR

[illegible]

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

On Active Service in the Fd

in England (Country.)

Date 22 Dec 44

K G Blackader

(*Signed personally. RP 105 fn 2.*)

(K G Blackader) Brig
Commanding 13 Cdn Inf Trg Bde
Convening Officer.

Brigadier (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

Medical Officer's Certificate. 4C/25
K.R. (Can.), para 557.

I certify that I have this morning examined No. C.10533 Pte.
Ouellette R. of 3 C.I.T.R.
and in my opinion, he is fit to undergo trial by Court Martial.
Station Field
Date 27 Dec 44 (Sgd.) G D Lavers Capt
(Medical Officer)
(Canadian Reinforcement units Routine Order No. 3, para 27, d/6 Jan 42)

Plea of Mitigation

Sir:

C 10633 Pte Ouellette R. enlisted 6 Nov 41 and proceeded overseas on Feb 43. He is single, age twenty-one catagory A. The accused was remustered from the Artillery to the Infantry Corps in Aug 44, at which time he was a gunner. He received his complete infantry training while attached to 1 Battalion Winnipeg Grenadiers. Pte Ouellette R was twice placed on draft for overseas service and each time removed. On being paraded to Colonel Wilson, Winnipeg Grenadiers, he was told that he would be eventually proceeding on draft. When the next draft was called, Pte Ouellette's name was included and under these circumstances he went absent without leave.

This soldier has been under close arrest for a period of eighteen days, and this is his first court-martial. It is Pte Ouellette's wish that the court be asked to take into consideration the element of pay, before passing sentence and also that he may be recommended by the court to be placed on draft at his training has been completed.

Accused Pte

SUMMARY OF EVIDENCE

Summary of Evidence in the case of C10633 Private Rolland OUELLETTE, 1 Battalion Winnipeg Grenadiers, on the strength of No 3 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas.

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

FIRST WITNESS

For the Prosecution

Capt. E.T. Stewart, General List, on the strength of No 3 Cdn Inf Trg Regt, an Officer of the Canadian Army Overseas, having been duly sworn, states:

I am Capt E.T. Stewart, and an Adjutant of No 3 Cdn Inf Depot Bn, 3 Cdn Inf Trg Regt. I hereby present, marked Exhibit "A", Certified True Extract from 1 Bn Winnipeg Grenadiers Daily Orders Part II No 50 dated 14 Sept 44 which shows that the accused, C10633 Pte Ouellette, R., whom I now recognize, absented himself without leave from 2200 hours 11 Sept 44. I present, marked Exhibit "B", Certificate in Accordance with P.C.2797 of Apr 42 dated 26 September 1944 which shows that the accused, was apprehended at Manchester by the C.P.C. at 1100 hrs 26 Sept 44. I present, marked Exhibit "C", Expense Voucher dated 27 Sept 44, which shows that the cost of returning the accused to his unit was in the amount of £0-14-8. I present, marked Exhibit "D", Certified true copy of the Declaration of a Court of Inquiry held on 22 October 1944, which shows that the accused absented himself without leave from 0640 hours 29 Sept 44. I present, marked Exhibit "E", AFO 1617 dated 31 Oct 44, which shows that the accused surrendered himself to the Civil Police in Bolton Borough at 0735 hrs 25 Oct 44. I present, marked Exhibit "F", Expense Voucher dated 1 Nov 44, which shows that the cost of returning the accused to his unit was in the amount of £0-14-8. I presnnt, marked Exhibit "G", Certified true extract from 1 Bn Winnipeg Grenadiers Daily Orders Part II No 82 dated 10 Nov 44 which shows that the accused absented himself from 0830 hours 5 November 1944. I present, marked Exhibit "H", Certified True Extract from 3 Cdn Inf Trg Regt Part II Daily Order No 19 dated 23 Nov 44, which shows that the accused returned at 1800 hrs 17 Nov 44. I present, marked Exhibit "I", Certificate in Accordance with P.C. 2797 of 10 Apr 42 dated 12 Dec 44, which shows that the accused was apprehended by the Cdn Prvst Corps in Glasgw at 1845 hours 9 Dec 44. I present, marked Exhibit "J", Expense Voucher dated 11 Dec 44, which shows that the cost of returning the accused to his unit was in the amount of £3-8-7.

E.T. Stewart Capt

(E.T. Stewart) Capt.

The accused declines to cross-examine this witness.

WW7

SECOND WITNESS

For the Prosecution

A71018 L/Cpl Monk, C.J., Hastings and Prince Edward Regiment, on the strength of No 3 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am A71018 L/Cpl Monk, C.J., and am employed on the Regimental Police of No 3 Cdn Inf Trg Regt. I was in charge of the Guard Room at Televera Bks 23 Nov 44. At about 1920 hrs 23 Nov 44 one of the prisoners knocked at the door of the bull pen. The door was opened and several of the prisoners rushed out and started a fight. During the fight, the key of the Guard Room door fell out of my pocket and someone picked it up and opened the door while the fight was going on. Some other prisoner opened the cell doors. When the prisoners were forced into the bull pen, it was found that several prisoners had escaped, one of them being the accused C10633 Pte Ouellette R., whom I now recognize.

A71018 L/Cpl Monk C.J.
(A71018 L/Cpl Monk C.J.)

The accused declines to cross-examine this witness.

THIRD WITNESS

For the Prosecution

L7545 L/Cpl Schutt, F.E., Canadian Provost Corps, No 2 Detachment, No 6 (Area) Provost Coy, a soldier of the Canadian Army Overseas.

Pursuant to Overseas R.O. 957(4) and R.P. 4(g) a statement of the witness' evidence purporting to be signed by him has been read over to the accused, C10633 Pte Ouellette R., and is included in this Summary and marked Appendix "A". I certify that the attendance of this witness cannot be readily procured owing to the exigencies of the service and to the expense and loss of time involved.

The accused does not demand the attendance of this witness for cross-examination.

A. E. Wilby
(A. E. Wilby) Lieut
Officer detailed to take Summary

FOURTH WITNESS

For the Prosecution

B131218 L/Cpl Leach F.C.L., Canadian Provost Corps, No 2 Detachment, No 6 (Area) Provost Coy, a soldier of the Canadian Army Overseas.

Pursuant to Overseas R.O. 957(4) and R.P. 4(g) a statement of the witness' evidence purporting to be signed by him has been read over to the accused, C10633 Pte Ouellette R., and is included in this Summary and marked Appendix "A". I certify that the attendance of this witness cannot be readily procured owing to the exigencies of the service and to the expense and loss of time involved.

The accused does not demand the attendance of this witness for cross-examination.

A. E. Wilby
(A. E. Wilby) Lieut
Officer detailed to take Summary

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The accused was cautioned as follows: Do you wish to make a statement or to give evidence on 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.

The accused declines to make a statement or to give evidence on oath.

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.

IN THE FIELD
20 December 1944

A. E. Willey Lieut
(A. E. Willey) Lieut
Officer Detailed to take Summary

1 BN WINNIPEG GRENADIERS C.A.

(ALLIED WITH H.M. SCOTS GUARDS)

DAILY ORDERS PART II

Last Order No 49 13 Sep 44 — Issued by MAJOR W.O. GRAHAM - A/OFFICER COMMANDING — Order No 50 14 Sep 44

7. ABSENT WITHOUT LEAVE

(d) AWL from 2200 hrs 11 Sep 44.

C10633 Pte OUELLETTE R.

"I McDONALD" Capt & Adjt.
(I. McDONALD)
1 Bn Winnipeg Grenadiers, C.A.

Certified True Extract

Officer having custody of original Record.

B CERTIFICATE IN ACCORDANCE WITH P.C.2797 of Apr. 42.

I Certify that No. 10633 .Rank Pte. .Name .Culette .R. . . . .

Unit Winnepeg Grenadiers . .was arrested at .Manchester .(Place)

at 1100 hrs. (hour) on 26 Sept 42 (date) and that at the time of his arrest he was wearing (Military Uniform) or (~~Civilian Clothes~~). Signature of Provost-Marshall, Assistant Provost-Marshall, or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant officer, non-commissioned officer in charge of the detachment of Canadian Provost Corps, Canadian Army in to whose custody the above mentioned person was taken on arrest. (Strike out part inapplicable).

(R.R.R.J.Holmes) Capt.,
D.A.P.M., London Area.

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

Reg. No. C.10638 Rank Pte Name OUELLETTE, E. Unit 1 Bn Wpg Grens

The following expenses were incurred in apprehending and returning the m/n soldier to his unit from MANCHESTER

Date	Particulars	Amount
I 27 Sep 44	Escorts return fare from ~~XXXXX~~ MANCHESTER TO HELMSLEY at half fare	0 7 4
27 Sep 44	Prisoners single fare to ~~XXXXX~~ HELMSLEY From MANCHESTER	0 7 4
	Prisoners fare from to	
	Escorts & Prisoners expenses for bed, meals, Bus fares	
	TOTAL £	0 14 8

I certify that the above statement of expenses is correct and that the amounts are fair and just.

Capt.
Officer Issuing Railway Warrant & Expense monies
~~No. 6 Area Provost Company, Canadian Provost Corps, London~~

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

Ref Dpr

Ex "D"

RECORD of the Declaration of a Court of Inquiry assembled at Duncombe Pk., Eng. on the 22nd day of October 1944, 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. C10633 Pte OUELLETTE E.

DECLARATION

The Court declare that No. C10633 Pte. OUELLETTE E.

1 Bn Winnipeg Grenadiers, C.A.

illegally absented himself without leave from Duncombe Park, Eng.

at 0640 hrs on the 29th day of Sep 44,

that he is still so absent, and that on the 30 Sep 44 he was deficient, and

that he is still deficient of the following articles :—

ARTICLES		VALUE		ARTICLES		VALUE	
Cotton waste, oz.	2		6				
Bottle water with carrier	1	5	4				
Veils face camouflage	1	1	11				
Blouses battledress	1	1	3 6				
Caps fd service	1		2 6				
Boots ankle w/laces prs	1	1	4 5				
Shirts angola drab	2	18	2				
Trousers battle dress, prs	1	1	4 1½				
Badges cap	1		4½				
Brushes hair	1		1 6				
Caps comforter	1		1 6				
Dressings first field	1		1 1				
Knives table	1			8			
Razors safety w/blades	1			3			
Belts web	1		3	4			
		5	9	2			

Lieut C.F. Kilburn att 1 Bn Wpg Grens C.A. President

Lieut L. Sedlezky att 1 Bn Wpg Grens, C.A. Member

Signed at Duncombe Pk, Eng

Lieut E.J. Zinkan 1 Bn Wpg Grens, C.A. Member

this 23rd day of Oct 19 44

Signature of Commanding Officer W.O. Graham Major.

Certified true copy

Signature of Officer having custody of original record

3/60B MFB 375-AFB 115 40/P&S/392 (6610)

Ex E.

I CERTIFY that the man whose personal description is given below surrendered himself to* Det.Con.184 Gibbon.

at Bolton Borough. at (hour) 0735 on

the ~~xxxx~~ 25th. of Oct.1944. as being No C.10633

(Rank and Name) Pte. OUELETTE. R.

a deserter (or absentee without leave) from D.Coy. Winnipeg Grenadiers, Helmsley, Yorkshire.

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 6 Inches

Complexion Fresh. Hair Dark brown.

Eyes Brown.

Marks

In uniform or plain clothes Uniform.

Probable Date and Place of Attestation	6/11/41. Ottawa.
Probable Date of Desertion or beginning of absence, and from what place	25/10/44. Helmsley, Yorkshire.

Gheghy. Sgt 28.

Signature of Officer of Police in charge of Bolton Borough Station.

31st ~~xxxx~~. October 1944 Date of Signature.

Ex E. p.

Form O.1617
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 Off. in charge of Police Stat. at

Date of Signature.

Exhibit E

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.

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* 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 at the nearest military station. (A.C.I. 489/1940).

(26132) Wt.43207/53 25,000 12/43 A & E.W.Ltd. Gp.698
(26913) Wt.55969/1671 12,000 3/44 " " Forms/O.1617/15

Exhibit F

Expense Voucher Re -- Ref: ER&O (Can)539

Reg. No. C.1063B Rank Pte. Name OUELLETTE, E. Unit 1 Bn Wpg Grens

The following expenses were incurred in apprehending and returning the m/n soldier to his unit from MANCHESTER

Date	Particulars	Amount
1 Nov 44	Escorts return fare from XXXXXXX MANCHESTER TO HELMSLEY at half fare	0 7 4
1 Nov 44	Prisoners single fare to XXXXXX HELMSLEY From MANCHESTER	0 7 4
	Prisoners fare from to	
	Escorts & Prisoners expenses for bed, meals, Bus fares	
	TOTAL £	0 14 8

I certify that the above statement of expenses is correct and that the amounts are fair and just.

[signature] Capt.
Officer Issuing Railway Warrant & Expense Monies
~~No. 6 Area Provost Company, Canadian Provost Corps, London~~

1/35 CMHQ 100:55
40/P&S/483(6782)

"D"

1 BN WINNIPEG GRENADIERS C.A.

(ALLIED WITH H.M. SCOTS GUARDS)

DAILY ORDERS PART II

ISSUED BY

Last Order No 81 d/9 Nov 44

MAJOR W.O. GRAHAM - A/OFFICER COMMANDING

This Order No 82 d/10 Nov 44

5. ABSENT WITHOUT LEAVE

(b) AWL from time and dates as shown

C10633 Pte OUELIETTE R. 0830 hrs 5 Nov 44.

"I McDonald" Capt & Adjt
(I McDONALD)
1 Bn Winnipeg Grenadiers C.A.

Certified True Extract

Officer having custody of orignal record.

Ex "H"

LAST ORDER
NO 18
22 NOV 44

3 CANADIAN INFANTRY TRAINING REGIMENT C A (E)
PART II DAILY ORDERS
ISSUED BY
A/COL J B WEIR OBE, ED, Commander

THIS ORDER
NO 19
23 NOV 44

10. ABSENT WITHOUT LEAVE

(w) AWL from 0830 hrs 5 Nov 44. Returned at 1800 hrs 17 Nov 44
C10633 PTE OUELLETTE R "C(E)"

"A.J. Geisler Lt"
.....
(J.B. Weir) A/Col
Commander
3 Cdn Infantry Trg Regt C A (E)

Certified True Extract

Officer having custody of
original record.

CERTIFICATE IN ACCORDANCE WITH P.C.2797 of 10 APR.43

I certify that No. C-106[illegible], Rank. Pte. . . Name Ouellette, R. . . .

Unit. No. 3 C.I.T.R. (CRU) . was arrested at. Glasgow. . . .(place)

at. 1845 . .(hour) on 9-Dec-44. .(date) and that at the time of his arrest he was wearing (military uniform) [illegible]

Signature of Provost-Marshal, Assistant Provost-Marshal, or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrent-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).

London
12-Dec-44.

W.R. Birch
(R.E.BIRCH), Capt.
D.A.P.M. C.M.H.Q.

Expense Voucher Re— 45pp Ref: KR & O (Can) 539

Reg No. C10633 Rank Pte Name Ouellette, R Unit 30 I T R

The following expenses were incurred in apprehending and returning the A.W.S Soldier to ~~his Unit from~~ London from Glasgow

Date	Particulars (2 portion)	Amount		
11 Dec 44	Escorts return fare from LONDON To Glasgow	1	10	10
	Prisoners single fare to LONDON From Glasgow	1	10	10
	Prisoners fare from to			
	Escorts & ~~Prisoners~~ expenses for Bed, Meals, Bus fares		6	11
	Total £	3	8	7

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
ADMIN. OFFICER D.P.M.'s L.D.

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

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

CHARGE R+D

Army Form B 252
(See King's Regulations)

..... (CRU) ..... Regiment
..... Battery / Squadron / Troop or / Company

CHARGE against No. ..... Rank .....

Name .....

Place ..... Date of Offence .....

OFFENCE .....

R+D.

CAPT.
R. E. BIRCH, D.A.P.M.
C.M.H.Q.

Names of Witnesses :—

1/Cpl. Bennett F.C. Can Provost Corps.

1/Cpl. Leach F.C. Can Provost Corps.

Signature of O.C. Battery, Squadron, Troop or Company .....

Punishment Awarded .....

By whom Awarded .....

Adjutant.

P.T.O

(1486) W.L.W.21/972/580. 2,000,000. 7/41. K. & H., Ltd. 5667/42

Statement of **EVIDENCE** in the case of

C-10633 Pte O Vallette, R.
No.3 C.I.T.R. (CRU)

Sir:

At Glasgow at about 1845 hrs 9 Dec 44. I was on patrol duty on West George St, in company with L/Cpl Leach, when I saw the a/m soldier.

I approached him and requested to see his pass, to this he stated I have left it in my Greatcoat at the Overseas Club Exchange Sq. I accompanied him to the a/m club where it was found that he was not in possesion of a pass or Greatcoat, I then requested to see his M.B.Bkpts 1.2 or 3. which he could not produce and stated that he was A.W.L. from his unit for a period of (2) two days.

[illegible] placed under arrest and conveyed him to Central Police Station, where he was placed in custody awaiting arrival of escort.

Glasgow
9 Dec 44.

F E Schutt L/Cpl,
(L-7545 F.E.Schutt.)
No.2 Detachment,
No.6 (Area) Provost Coy.

Sir:

I have read over the above statement and corroborate same.

Glasgow
9 Dec 44.

REMARKS F.C. Leach L/Cpl,
(B-131212 F.C.L.Leach.)
No.2 Detachment,
No.6 (Area) Provost Coy.

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).*

C10633 Private Rolland OUELLETTE, 1 Bn Winnipeg Grenadiers (3 CITR)

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.A. Sec 15 (1) 11 times.

For A.A. Sec 40 3 times.

~~For~~ ~~times.~~

~~For~~ ~~times.~~

Date of first entry in Field Conduct Sheet 7 Jun 42

Date of last entry in Field Conduct Sheet 6 Sept 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 beginning on the day of~~

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 18 days in military custody, *i.e.*, nil days in open arrest, 18 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 21 yrs

6. The date of his attestation ~~calling up for military service~~ is 6 Nov 41

7. The service which the accused is allowed to reckon is 3 yrs 1 mo.

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

~~8. The accused is in possession of‡~~

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.

EX B

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.*

(*28072) Wt.30721/3701 $2,000 9/44 A & E.W. Ltd. Gp.696

C.10633 OUELLETTE, R.
No Name

Sqn, Battery, or Company | Corps | Date of enlistment 6 Nov 41 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3458)

Date of last entry in Company Conduct Sheet 26 Apr 42 | 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
	Previous sheet destroyed on completion of six months service								
Field	7-6-42	Gnr		AWL from 2200 hrs 7-6-42 until 0845 hrs 17-6-42. AA 15(1).	Sgt Gillies L/Sgt Hogan	14 days CB Cost of Appre $20.20	18-6-42	Capt McGairn	FR&I 149 (1)(a) 10 dy Pay. FR&I 149(1)(c) 10 days pay
Field	4-9-42	Gnr		AWL from 1700 hrs 4-9-42 until 1700 hrs 5-9-42.	BSM Forbes	7 dys CB	7-9-42	Maj McGairn	Forf 1 dys pay FR&I 149(1)(a)
Field	15-11-42	Gnr		AWL from 1230 hrs 15-11-42 until 0830 hrs 17-11-42	BSM Forbes BDR Luckham	7 days CB	17-11-42	Maj McGairn	Forf 2dys pay FR&I 149(1) 5 dys pay FR&I 149(2)

CERTIFIED TRUE COPY [signature]
OF REGIMENTAL DOCUMENTS IN MY POSSESSION.

(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	18-4-43	Gnr		WOAS AWL from 2200 hrs 18 apr 43 until 2330 hrs 18 Apr 43 (Absent 1 hr 30 min) AA Sec 15(1)	Bdr Chapman Bdr Walsh	2 days CB	19-4-43	Lt.Col G.T.Inch	
Field	3-6-43	Gnr		WOAS AWL from 2359 hrs 3 Jun 43 until 1350 hrs 4 Jun 43 (Absent 13 hrs 51 mins). AA Sec 15(1)	Documentary	2 days F.P. 2 days pay	4-6-43	Lt.Col G.T.Inch	Total forf 3 days pay
Field	1-8-43	Gnr		AA Sec 15(1) WOAS AWL from 2300 hrs 1 Aug 43 until 2230 hrs 3 Aug 43. (1 dy 23 hrs 30 mins) Close arrest 3 dys 1 hr 30 mins)	Sgt Winter, Documenta	T. 8 days FP ry Stoppages amount of 17s 2d cost of apprehension	7-8-43 to	Lt.Col. D.R.Corbett	Forf Pay 2 dys FR&I 149(1)(a). 8 dys FR&I 149(2). 3 days FR&I 149(1)(c)
Field	15-8-43	Gnr		AA Sec 15(1) WOAS AWL from 2300 hrs 16 Aug 43 until 0815 hrs 20 Aug 43 (Absent 3 dys 9 hrs 15 Min)	Sgt Winter, T Documentary	28 dys FP	20-8-43	Maj.H.C. Edworthy	Forf 4 days pay FR&I 149(1)A. Forf 28 dys pay FR&I 149(2)

C.10633 OUELLETTE, R.
No Name

Sqn, Battery, or Company | Corps | Date of enlistment: 6 Nov 41 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (3458)

Date of last entry in Company Conduct Sheet: 26 Apr 42 | 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	1-9-43	Gnr		AA Sec 15(1) AWL from 1315 hrs 1 Sep 43 until 0045 hrs 20 Sep 43 (total 18 days 11 hrs 30 mins) Close arrest from 0045 hrs 20 Sep 43 to 1700 hrs 22 Sep 43 (1days 17 hrs 15 Mins)	Sgt Witeys Documentary	28 days FP	22-9-43	Lt.Col D.R.Corbett	Ffts 19 day pay FR&I 149(1)(a). 28 days pay FR&I 149(2) Placed under s topp-ages of pay of £0-9-10, cost of apprehension
Field	21-8-44	PTE		Conduct to the prejudice of good order and military discipline. Dirty rifle on parade. Sec 40AA		3 dys CB	21-8-44	J.R.Carter Major	

CERTIFIED TRUE COPY .....
OF REGIMENTAL DOCUMENTS IN MY POSSESSION

MD Original

(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	1-11-43	Gnr		AA Sec 15(1), AWL from 1200 hrs 1-11-43 to 2245 hrs 15-11-43 . (14 days 10 hrs 45 mins)	Sgt MacDonald Documentary	21 days F.P. 21 days pay FR&I 149(1)(b)	18 Nov 1943	Lt Col.P.M. Irwin	15 days pay FR&I 149(1) (a)
Field	15-11-43	Gnr		AA Sec 40, Conduct to the prejudice not in possession of his MEM 1, Parts 1 and 3.	(Documentary)	Escort Stoppages £0-18-2			
Field	15-11-43	Gnr		AA Sec 40, Conduct to the prejudice wearing Commando shoulder flashes, knowing he was not entitled to same					
Field	11-12-43	Gnr		AA 15(1) AWL from 1600 hrs 11-12-43 to 1500 hrs 18-12-43 (6 days 23 hrs)	Doc. Sgt Buchanan	14 days FP 14 days pay FR&I 149(1)(b)	22 Dec 43	Lt.Col.P.M. Irwin	7 days pay FR&I 149(1) (a)
Field	18-2-44	Gnr		WOAS AA Sec 40, Conduct to the prejudice etc, improperly dressed	Documentary	2 days FP 2 days pay	24-2-44	Major H.G.S. Franks,M.C.	Ffts 2 days pay FR&I 149(b) Total stre 2 days pay

MFM 6
(AFB 122)
40/P&S/156 (3458)

No C.10633 Name OUELLETTE, R. | Sqn, Battery, or Company | Corps | Date of enlistment 6 Nov 41 | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet 26 Apr 42 | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 3 | 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	10-6-44			Blood Donor					
Field	6-9-44	PTE		AWL from 2359 hrs 2 Sep 44 until 0900 hrs 5 Sep 44 (Absent 2 days 9 hrs) SEC 15(1)AA.	SGT Sawyer R.W.	14 dys CB	6-9-44	Major W.O. Graham	Auto Forf 3 dys pay FRAI 149(1)(a)

CERTIFIED TRUE COPY OF REGIMENTAL DOCUMENTS IN MY POSSESSION

(PTO)

3 CANADIAN INFANTRY TRAINING REGIMENT (C.A.O) 3D/11

I, No., C10633 Pte Ouellette R. Wish to have
(Rank) (Name)
an Officer defend me at my forthcoming trial by Court Martial.

I desire the services of In Office
if he is available.

(Sgd.) R. Ouellette

LIST OF WITNESSES

In the case of C10633 Pte Ouellette, R., Wpg Grens, on the strength of No 3 Cdn Inf Trg Regt.

FOR THE PROSECUTION

1.	Capt E.T. Stewart,	No 3 Cdn Inf Trg Regt.
2.	A71016 L/Cpl Monk C.J.	No 3 Cdn Inf Trg Regt.
3.	L7545 L/Cpl Schutt, F.E.	Cdn Prvst Crps, No 2 Detach, No 6 (Area) Provost Coy
4.	B131212 L/Cpl Leach F.C.L.	Cdn PrvstCorps, No 2 Detach No 6 (Area) Provost Coy.

FOR THE DEFENCE — N I L

LIST OF EXHIBITS

In the case of C10633 Pte Ouellette, R., Wpg Grens, on the strength of No 3 Cdn Inf Trg Regt.

EXHIBIT "A" - Certified True Extract from 1 Bn Wpg Grens Daily Order Part II No 50 Dated 14 Sept 44

EXHIBIT "B" - Certificate in Accordance with P.C. 2797 of Apr 42 dated 26 Sept 44.

EXHIBIT "C" - Expense Voucher dated 27 Sept 44.

EXHIBIT "D" - Certified True Copy of the Declaration of a Court of Inquiry held on 22 October 1944.

EXHIBIT "E" - AFO 1617 dated 31 Oct 44.

EXHIBIT "F" - Expense Voucher dated 1 Nov 44

EXHIBIT "G" - Certified True Extract from 1 Bn Wpg Grens Daily Orders Part II No 82 Dated 10 Nov 44

EXHIBIT "H" - Certified True Extract from 3 Cdn Inf Trg Regt Part II Daily Order No 19 dated 25 Nov 44.

EXHIBIT "I" - Certificate in Accordance with P.C. 2797 of 10 Apr 42 dated 12 Dec 44.

EXHIBIT "J" - Expense Voucher dated 11 Dec 44.

20 December 1944

This is to acknowledge that I have received free of charge, the following papers in connection with my forthcoming trial by F.G.C.M.

1 Copy of Charge Sheet
1 Copy of Summary of Evidence
1 List of Witnesses
1 List of Exhibits.

R. Ouellette
C10633 Pte Ouellette R.

5 H-139

ON HIS MAJESTY'S SERVICE

FASTEN Envelope by gumming this Label across Flap.
OPEN by cutting Label instead of tearing Envelope.

Kfn Ouellette, R. G.

1/14 CMHQ 40.1
40 P & S/52
(Strips of 4)

FIELD GENERAL COURT-MARTIAL

5 A 139

4/38B

Convened by Order of Brig G W TARLETON DSO MC Comd Brussels Gn dated 23 Oct 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.
H-14526	Rfn		Raymond Gerald	OUELLETTE	X List RWR att Cdn Sec HQ Brussels Grn

PROCEEDINGS REVIEWED

24 Dec 45 A.V. Bradley Maj

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 30 Oct 45 & 2 Nov 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

38/100.

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.(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 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 ~~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 B H COX	RCArmdC	1 Cdn C M Centre
Member	Capt	P J POULIN	RCA	1 Cdn C M Centre
Member	Capt	D L MACDONELL	Cdn Scottish att	1 Cdn C M Centre
Judge-Advocate				
Prosecutor	Capt	J.W. Vantz	CIC	1 Cdn C M Centre
Defending Offr	Capt	R.V. Swetnam	CIC	13 C Bde HQ

Questions by President: Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans Yes (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 DI p 3.)

A8. The accused H-14526 Rfn Raymond Gerald OUELLETTE before arraignment make(s) (no) (a) plea (4)

(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 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.

Cdn Sec HQ Brussels Grn
Vol I Page 107

SCHEDULE.

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

Accused: H-14526 Rfn Raymond Gerald OUELLETTE XList RWR att Cdn Sec HQ Brussels Garrison

	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 15(1)	Not guilty.	Guilty.	except that the amount was A&L
2nd	AA 41	Not guilty.	Guilty.	from 1400 hrs 4 Jan 45 until apprehended
3rd	AA 40	Not guilty.	Guilty.	at TURNHOUT at 1435 hrs 10 Aug 45
4th	AA 8 (2)	Not guilty.	Not guilty	(Total time absent 67 days 45 minutes)
5th	AA 10 (1)	Not guilty.	Guilty.	
6th				

~~Dismissed, discharged, struck off strength, forfeited seniority, reduced in rank, fined, severely reprimanded, reprimanded, admonished~~ (MML p 463 fn 4, para 7, 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 ~~—~~ beginning on (date) ~~—~~

(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 98 days, of which 28 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 nine (9) months

(Sgd) ~~—~~ Judge-Advocate, if any. 2 Nov 45 Date awarded. (Sgd) George H Cox 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:

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) ~~—~~

Date 11 Nov 45 Commanding Cdn Sec Cdn HQ Brussels Confirming Officer.

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

Accused.	Date.	Signature of Offr.
H.14526 Rfn OUELLETTE R G	21 Nov 45	~~—~~ DAPM Cdn Sec BRUSSELS GARRISON

Published in Cdn Sec HQ Brussels Garrison CR X 9 List #19 d/21 Nov 45.

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 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.

GPR

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 Yes, after prosecution case, to summon defence witnesses.
(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) GPR
(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) recorded and exhibits A + B attached.
(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)~~ GPR
(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 ...elf on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) ...may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) ...statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) ...ay call witnesses in your defence and as to character, whether you give evidence or make a statement or do ...

...esident to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Neither .... Do you intend to call witnesses on your behalf ? 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(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court ~~is~~ (are) recorded in Part I ...e 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 on the fourth charge, and states to the accused that the finding(s) ...e Court on the 1st, 2nd, 3rd + 5th 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, that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~ GPR
(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) ...ns 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(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 D and Ex E respectively.(3) GPR
(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 in plea of mitigation app 3.(2) GPR
(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) GPR
(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.

CHARGE SHEET

The accused No H-14526 Rfn Raymond Gerald OUELLETTE, X List RWR, attached Cdn Section HQ Brussels Garrison, 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 1400 hrs 4 Jun 45 until apprehended at 1150 hrs 11 Sep 45. (Total absence: 98 days 21 hrs 50 minutes)

SECOND CHARGE
Sec 41
Army Act

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, COMMON ASSAULT

in that he

in the Field, in Belgium on 11 Sep 45, assaulted No T 10671203 Dvr TWIDDLE A by presenting a pistol at him.

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 Belgium, on 11 Sep 45 was improperly wearing badges of rank to which he was not entitled in that he was wearing sergeant's chevrons.

FOURTH CHARGE
Sec 8 (2)
Army Act

WHEN ON ACTIVE SERVICE, OFFERING VIOLENCE TO HIS SUPERIOR OFFICER

in that he

in the Field, in Belgium, on 11 Sep 45, pointed a loaded pistol at Capt J C MORRIS, RASC, in a threatening manner.

FIFTH CHARGE
Sec 10(3)
Army Act

WHEN ON ACTIVE SERVICE, RESISTING AN ESCORT WHOSE DUTY IT WAS TO HAVE HIM IN CHARGE

in that he

in the Field, in Belgium, on 11 Sep 45, when arrested by No 14585587 L Cpl POULTNEY E R, 281 Provost Coy, CM Police, resisted the said L cpl POULTNEY E R, by struggling violently, attempting to strike him and having to be carried into a vehicle.

In the Field
19 Oct 45

(L E RYAN) Lt Col
Comd
Cdn Sec HQ Brussels Garrison

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL.

In the Field
23 Oct 45

(G W TARLETON) Brigadier
Commanding
Brussels Garrison

GAE

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.
H-14526	Rfn		Raymond Gerald	OUELLETTE	X List RWR 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*) 23 Oct 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	G B H COX R C Armd C	1 Cdn C M Centre

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	P J POULIN RCA	1 Cdn C M Centre
Capt	D L MACDONELL Cdn Scottish	att 1 Cdn C M Centre

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.)

G. W. Tarleton

(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Date 23 Oct 45

(G W TARLETON)

Commanding Brussels Garrison

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

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

GRG

MEDICAL OFFICER'S CERTIFICATE

I certify that No.....H 14526 Rfn. Ouellette. R.G?

i.....Att'd Cdn Section Brussels Garrison. Regiment

is.....Fit to undergo trial by Court Martial.

~~Unfit~~ GRM

H R Murray Capt

Signature of Medical Officer

Brussels
30 Oct 45

MEDICAL OFFICERS CERTIFICATE

(KR(Can)Para 557)

I certify that I have this day examined _____ (No)

Rfn. OUELLETTE, R.G. H/145216 and in my opinion is

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

Station Brussels

Date. 2 Nov 45

(Sgd)
Medical Officer
(unit) _____

CASE OF

H 14[redacted]6 : Rfm. Raymond Gerald OUELLETTE.

Defence asks for an adjournment on the grounds that some of the defence witnesses are not yet available.

Defence agrees to ~~go ahead~~ that the Prosecution goes on with it's case.

Prosecution opens.

Documentary evidence.

a) Part II order extract form.
A5 x 3. 27 Sept 45.
For Part II order no 98 dated 6 Jul. 45.
Signed and entered as exhibit 'A'

b) Defence objects to "Apprehension Certificate". 11 Sept. 45.
Court rules that it is admissible and it is entered as exhibit "B".
Defence's objection is based on the grounds that the number shown on the certificat is not the number of the accused.

First witness for Prosecution.

120451. Sgt Baker W.J. 36 Fd. Butchery RASC, having been duly sworn, states:

I recognize the accused. I do not know his name. I first saw the accused on the 11 Sept. 45 at about 1030h. I was proceeding in the rear of a 3 ton Chev. driven by driver Twiddle

of 142 Coy RASC. I was proceeding 2.
to form 140 DID to 149 Fd. Bakery
for the purpose of drawing rations.
The rations in the lorry shifted, so
I shouted to the driver to stop.
He immediately did do, and
climbed into the back of the truck
to help me. The engine was still
running. After he got in the back,
we heard the engine rev up and
the truck moved forward. The
driver Twiddle jumped out of the
truck and chased up the side
of the lorry. It was shortly after
that that the lorry stopped.
I got out and joined him at the
front of the lorry. Finding him
there arguing with the accused
and another soldier with sgt's
chevrons on his arms. They both the
accused and his friend,
had sgt's chevrons on their arms.
The accused ordered me into the
cab, showing a revolver in his
blouse. He got in beside me and
closed the door. The other sgt got
on the running board of the lorry
alongside the driver and he ~~drew~~ too
had revolver. This sgt, not the accused,
said "get cracking, take us to Mons."
So the driver just had to move forward
and carry on down to...)
The accused was at the time sitting
beside me by the door with his

revolver pointing toward myself and the driver, driver Twiddle.
When I was sitting there, with his revolver pointing in my direction, I felt a bit shaky. I knew it was pretty hopeless to try doing anything with a man armed with a revolver, so I left it to the driver. The road that he told us to drive down to led from the Fd. Bakery, and as the entrance to the Fd. Bakery was only a few yards from the main road, the driver took it upon himself and swung into the driveway. I got out of the truck and reported to the office, to the Staff Sgt.
I have been acquainted with driver Twiddle for about 2 months. I do not know his number or initials.

Defence.
When we drove away, with one Sgt. on the running board and the 3 of us inside the car, the accused did not say anything.
During this time, the accused had his revolver in his blouse. From the time I first saw him until I arrived at the Fd Bakery office, the accused did not showed his revolver. He may have taken it out of his blouse, but I can't remember.

the sgt. standing on the running board had one revolver in his pocket, and I think there was one in between the two seats. I should imagine there were 3 revolvers in all. I couldn't be sure if the revolver between the 2 seats was accessible to the sgt on the running board; this was so long ago.
The fact that the accused sitting beside me had a revolver made me more nervous than the fact that the sgt on the running board had one, since the accused was nearer to me.
When the driver pulled off the road into the Botany the accused did not do anything.
The sgt. on the running board gave the directions as to where to go.

Prosecution - Re-examination.
There are two seats in the front of the vehicle. The accused was sitting against the door, beside me.
It was a Canadian type vehicle. A right hand drive vehicle.
The accused had his revolver in his hand, pointing to his right, in the direction of the driver and myself.
The accused was hunched forward, and pressed against the door.
I was not armed.

Court. GBC 5.

as far as I can remember, the accused could not have reached the pistol between the two seats without bending over me.
At the Fd. Bakery, the accused did not attempt to prevent me from getting out of the truck. I scrambled by him to get out. I can't remember which of us two opened the door.
The driver was still in the cab when I got out.

RP 83 B Complied with. GBC
Paine J Poulin Capt

Second witness for Prosecution.
Pte. McDonald, H. 514640644., 140 DID RASC.
having been duly sworn, states;
I recognize the accused. I first saw him at about 1100h on the 11th of Sep. at 140 DID Bakery. He was with another soldier wearing Sgt.'s chevrons. The accused was also wearing Sgt's chevrons. There was no officer present. Capt. Morris arrived about 15 minutes after. When Capt. Morris arrived, the accused and his comrade entered the Bakery's office with Capt Morris. I went in after a short time.
In the office, Capt Morris ordered the accused to lay his pistol on the table. The accused became abusive, using insulting language and withdrew the pistol, attempting to point it at

the Captain. Capt Morris was wearing 3 stars on his battledress shoulders. Capt Morris Then came to grips with the accused and relieved him of his pistol. The accused was facing Capt Morris, got his pistol from his blouse, and tried to swing it around. As he tried to swing it around, the Capt grabbed him.

We Then took the accused into a small ante room. Shortly after that a corporal arrived to draw head. He was a Provost Lance corporal. He saw Capt Morris.

From the office, the corporal went and told the accused that he was under arrest. We then took the accused into the yard. The Provost corp was still in the office with Capt Morris. The accused made a break for it. Sgt Rolfe blocked his escape. After that, the provost corp came out. We held the accused for a few minutes, and when he quited down we let go of him. He then wanted to fight the corp. He became abusive and wanted to fight the corp. He wanted to use gloves to fight the corporal - boxing gloves. The corporal said " go ahead and try" The accused then made a swing at the corporal with his fist. He did not hit him, The corp was too quick

the corporal felled him with two blows. Sgt. Rolfe, the corp and myself carried him into the 15 cwt truck. He was in no condition to offer any resistance.
There were only three shots: one from the accused and two from the corporal.
Previous to his diving off, the accused said to Capt Morris, who was standing at the back of the truck "I will get you at the first opportunity"
He was not armed at the time.

Cross.

Between the time the accused drew his pistol from his blouse and the time Capt Morris grabbed him, there was a lapse of time of about 3 seconds.
It was in the Barrack yard that the accused made a break for it.
There was Sgt Rolfe, myself and the driver, and the gate policeman.
The yard is fenced in, by a high wall. It was after the provost corp said "go ahead and try it" that the accused took a swing at him.
The accused was not knocked out, but he was in bad shape.
Between the time the corporal hit him, and the time when the accused made the threatening remark to Capt Morris

...er a lapse of time of about 15 minutes.
Directly the accused hit the ground, we put him in the truck.
The truck drove away with him about 20 minutes after that.

Court.

The accused had his tunic on at this time, wearing sgt's stripes.

RP83B Complied with.
Pierre J Poulin. Capt.

I was ordered to act as escort when the accused was in the anteroom, after the corporal had placed him under arrest.

RP83B Complied with.
Pierre J Poulin Capt

Third witness for Prosecution.
S 200 241. S/Sgt. Whitaker VA. 140 DID PASC.
having been duly sworn, states:
I recognize the accused. I first saw him at the Bakery at app. 1100 on the 11 Sept. He was wearing battledress, ...s hat, and sgt's chevrons.
...ashed him what authority he ...d for stopping a W.D. vehicle.
...ashed him for the work ticket.
...adopted an agressive attitude, and ...ed to show an authority, written ...rwise. He had a service revol... ...ith him. He had it inside ...ttledress blouse. On the left side.

there was a lapse of time of about 8
150 minutes.
Directly the accused hit the ground,
we put him in the truck.
The truck drove away with him about
20 minutes after that.

Court.

The accused had his tunic on at
this time, wearing sgt's stripes.
RP83B Complied with.
Pierre J Poulin Capt.

I was ordered to act as escort when
the accused was in the anteroom,
after the corporal had placed him
under arrest.
RP83B Complied with.
Pierre J Poulin Capt.

third witness for Prosecution.
S 200 241 S/Sgt. Whitaker VA 140 DID RASC,
having been duly sworn, states:
I recognize the accused. I first saw
him at the Bakery at app. 1100 on
the 11 Sept. He was wearing battledress,
no hat, and sgt's chevrons.
I asked him what authority he
had for stopping a W.D. vehicle
and asked him for the work ticket.
He adopted an agressive attitude, and
refused to show an authority, written
or otherwise. He had a service revol-
ver with him. He had it inside
his battledress blouse. On the left side.

after questioning him, he hung about the lobby, I ordered him off the premises. He refused to go. I sent a civilian to bring the O.C.
The O.C., Capt. Morris arrived. He took the accused in the office. I went in also. The O.C. asked for his pay book, and then instructed him to place his service revolver on the table. Eventually this had to be taken from him by force. He did not put his pistol on the table when asked to do so by the Captain. The prisoner insisted on holding the pistol with his right hand in ~~this~~ breast all the time. ~~During the time the~~ the O.C. grabbed him by the wrist. During that brief period, possibly 30 seconds, the accused held the pistol leveled at the O.C. As he withdrew his hand from his tunic, the pistol came out with it. His attitude was stubborn and aggressive. ~~It was necessary for Capt Morris to take the pistol and~~ It was necessary for Capt Morris to ~~take~~ grab the pistol from the accused's hands because the accused refused to hand it over voluntarily. Capt Morris retained the accused wrist with his left hand and with an upward movement wrenched the pistol from his grasp with his right hand.

after the pistol was taken from his hands, I don't know what the accused did.
I don't know the name of the accused. I have not examined the pistol. The accused was taken to a storeroom near the office.
I was with the accused all the time. At that time the military police truck came. ~~in~~. I sent an soldier to bring the driver of the truck in. A military policeman Corporal came. He asked the accused for his pass. He then put the accused under arrest. ~~They~~ We then left the storeroom and went in the yard.
I was ~~at a~~ distance away, and I saw the accused stand up to the military police in an agressive manner. I saw the corporal strike him. I could not see why the corporal had hit him.
When I first came in the court yard, I ~~saw~~ the accused did not do anything. Not that I can remember. After the corporal hit the accused, he had to be lifted into the truck. Because he would'nt go on his own voluntarily. He had to be pushed across the yard towards the truck. The truck was about 7 yards away.

I spoke to the accused. I can't remember the words spoken.
I was then playing for time until the O.C. arrived. That was about 20 minutes.
In the court yard, before the accused was struck, I had no dealings with him except that he insulted me once in front of the police.

Defence

When the corp. struck the accused, I was about 25 feet away.
I had nt a clear view. At that time, in the court yard, there were 6 other persons and myself.
I think 3 of them were actually on the spot of the fight, Sgt Rolfe pte McDonald, and a driver whose name I don't know.
These 3 would have had a better opportunity of observing what went on.

Court.

When I first saw the accused, he was standing outside the office with another Cdn. soldier.
When the O.C. arrived, the other canadian soldier was missing.
I do not know what kind of revolver the accused had.
When the Captain grabbed his wrist, the revolver itself was still under the tunic. When he took it out of his tunic, the captain was still holding his wrist.

RP 83 B Complied with. [signature] Jones

Fourth witness for Prosecution.

S 104357. Sgt. Rolfe LA 140 DID RASC.
having been duly sworn, states:
I recognize the accused. I saw
him on the 11th of Sept. 45, at appx.
1100h that morning. The first time
I saw him, he was with Capt Morris,
Pte McDonald, and S/Sgt Whitaker,
in the office.
The accused was interrogated by
Capt Morris. He was asked for his identification papers and leave pass.
These were handed to Capt Morris.
He then asked the accused if he was
armed. The answer was "yes". He was
then ordered to give to Capt Morris
whatever arms he possessed. He seemed
very reluctant to do this, put
his right hand on his tunic blouse
backed up to the wall and suddenly produced a revolver from ~~which~~
his tunic in a threatening attitude
and pointed the revolver at Capt
Morris. Capt Morris grabbed the
accused's wrist, wrenched away
the revolver and passed it to me.
I believe it was a Luger pistol.
I examined it. I found that there
was one round in the breach and that
the magazine of the revolver was broken.
Capt Morris had a battledress on, and
a cap. with 3 pips on his shoulders.

In the court yard, I was left in charge of the prisoner. The prisoner was standing with his hands in his pockets. He pulled his right hand out of his pocket ~~and tried to strike me~~ ~~He did strike me~~ and struck me and tried to make a get away. I grabbed hold of him by the right shoulder and then Pte McDonald caught his left arm. The L/Cpl of the CMPs arrived on the scene. The L/Cpl warned the accused that he was under arrest and that he would be taken to his HQ. The prisoner seemed very upset about it and offered resistance and refused to get in the lorry on the order. The corp. told him if he started something it would be worse for him. There was a bit of a struggle ~~down~~ following which the prisoner was ~~put~~ forced into the lorry. The struggle was between the L/Cpl and the accused. I saw it. I can't say exactly how it started. I saw the L/Cpl strike one blow. It is the only one I could swear to. The accused attempted to strike a blow. That was after the L/Cpl had placed him under arrest. I saw him the accused put his arms up in a fighting attitude.

Defence.

When the accused backed up to the wall and produced a pistol, he was approx 2 feet away from Capt Morris

This occured about 3 minutes after Capt Morris asked him to put his pistol on the table.
During those 3 minutes, Capt Morris told him 2 or 3 times to lay his pistol on the table, and he seemed reluctant to do so.
Later, in the court yard, when the accused struck me, he was just a short distance from me. He did not have to move his feet to hit me.

Court.

~~There was no time for the accused to draw his pistol and point it because Capt Morris grabbed his~~

~~When~~ The accused pulled the revolver from his tunic, and when Capt Morris grabbed his wrist, the pistol was out of his tunic, pointing towards Capt Morris. It was just a quick wrench and it was out of his hand. This was in quite a small room. About 10 x 12 feet.
The pistol was actually pointing at Capt Morris when the Capt grabbed the accused's wrist.

RP83 Complied with [illegible]
[illegible]
Capt

Fifth witness for Prosecution.
14565597. S/Cpl. Poultney E.R. 281 Pro Coy.
having been duly sworn, states:
I recognize the accused, Soldier Oullette.
I saw him in the baking yard of
140 C.I.D. at about 1115 h on the 11 Sep.
I drove into the baking yard for
the purpose of drawing rations.
~~Driver Fielder~~. As a result of a
conversation with driver Fielder, I
got out of the lorry and Capt Morris
met me in the yard. As a result of
that conversation with Capt Morris
I went into the office and there
saw Oullette. I told him that I
was going to place him under ar-
rest. A little while afterwards Oullette
made an attempt to escape. He ran
into the yard towards the gate.
Sgt Rolfe blocked his path and
Oullette struck at Sgt Rolfe. It
appeared to me that he struck him
in the throat. He was forcibly re-
trained and brought back into the
yard. During this time Oullette,
in my presence, made numerous
threats to take the life of Capt Morris
he also threatened to kill me.
He used very obscene language.
As Oullette started to walk away
I told him to stand still. He refused
to obey this order, saying that he
was a Sgt and he would not take
orders from a two Corporal.

I attempted to reason with him but could see that it was no use. He then intimated that he was going to strike me and walked right out to me with his fists clenched. I watched Ouellette very intently and again told him the seriousness of his position. He said "Ca ne fait rien" to me, I think I said "All right." Out of the corner of my eye I could see Ouellette's arm rising so I struck Ouellette. He fell to the ground. He was picked up immediately by 2 men who were standing about 4 or 5 yards away. He was carried bodily into a waiting vehicle. I then conveyed him to the 81st Transit Coy. Guard room at Tournai, where he was detained.

When I walked into the office at first, I made it quite clear that he was under arrest.

When Ouellette was carried to the vehicle, there was a definite struggle.

Defence.

When I told the accused that he was under arrest, we were in a room adjoining to the office.

When the accused tried to escape, he did not get actually get out of the yard. He went near to the entrance.

When I said "All Right", it was just before the accused and I had this mix up. ~~It is not likely~~ I definitely did not say "All right, go ahead and try it". I may have said "I shouldn't try it if I were you". I ~~ad~~ have done amateur boxing only.

The accused was about 30 yds from the truck when I knocked him down. I hit him pretty hard.

There were ~~abou~~ some people in the yard, about 5 or 6 yds away, when I had the blows with the accused.

After I hit him, the accused may have been dazed for a while, but he was not laid out, and he definitely struggled when they ~~had~~ took him to the truck.

When I hit him, he was definitely attempting to hit me.

He was definitely not drunk.

RP 83B Complied with

Paine J Poulin C/T

Sixth witness for Prosecution.

358123. Capt. J.C. Morris O.C. 140 DID PASC.

having been duly sworn, states:

I recognize the accused. I saw him first at about 1120 on the 11 sept. 45. in the bakery which is attached to my unit. I arrived at the bakery, entered the bakery yard, and on infor-

mation received I walked into the
valley office ~~and [illegible]~~ where there
were two men dressed as Sgts. by the door.
One of which was the accused. I
the accused came in after me. the
other one I never saw again:
I had a brief word with my staff
Sgt. I did not know what was
going on until then.
I then proceeded to question the accused.
I asked him for his pay book and
also asked him his unit pass. He
told me he was a Sgt. in the
RCASC. and his pay book was
made out in the name of someone
named Hamilton in the medical
corps. I asked if he had any
pass and whether he was on leave.
He replied he had 'nt.
During this time he repeated several
times that he wished to go.
I told him that I considered his
statements to be unfounded by
any sort of proof. and that I would
keep him for further investigation by
the Mil. Police.
~~I noticed he obvious~~ It became
obvious in my mind that if he
was going to be kept, a certain
amount of restraint was going to
be necessary. From information
I had heard from others, I
believed that he was armed, and
while I was talking to him
I noticed the left front of his

battledress blouse had a very
considerable bulge. I told him
that I proposed to keep him
and I said 'I don't want any
gun play' and told him to lay
the pistol down on the desk.
He refused and made a number
of threatening remarks and then
backed against the wall and with
a swift movement of his right
hand produced a pistol from his
~~the~~ blouse with his right hand
in a sweeping motion across his
body from left to right. I was
close enough to be able to grasp
his right hand in my left,
force it clear of my body and to
the fullest extent of his right arm,
and ~~wrench~~ wrench the pistol from his grasp.
Just before I grasped his hand, the
pistol was pointing straight in front
of him, and I was ~~from~~ standing
directly straight in front of him, but
I had anticipated this move,
and I acted as quickly as possible. I handed it straight away
behind me to someone else.
I examined the pistol later on
the same day. It was a Luger
German. There was one round
in the breech. To remove it was
not loaded. Later on, I was in
the court yard when the accused was

under the custody of a S/Cpl from the ● M.P.
I observed the accused attempt to strike the S/Cpl. and the S/Cpl struck back. The accused fell to the ground, then got up himself. Then he was told to move over to a vehicle which was standing approx. 15 yds away. He was told by the S/Cpl. He refused to move and had to be hassled. He adopted a stubborn attitude. At the same time he used abusive language. He reached the vehicle and made a final stand not to get in and he had to be lifted into the vehicle.
I was dressed in battledress, as I am today.
The accused was wearing sgt.'s chevrons on his battledress. No hat.
Defence.
At the time ~~the bloodbath~~ I saw the S/Cpl strike the accused, I was approx. 5 feet away from them I was that close to them for about 5 or 6 minutes previous to that. Sgt Rolfe was there. And some others. I heard no conversation between the S/Cpl and the accused. They were conversing but I could not hear what was being said.
Court.
When I made the motion to take away the pistol from the accused, the pistol was pointing at me, but only for a split second.

He had no div. signs on his battle dress. He had nothing to show that he was a Canadian.

RP 83 B Complied with - [illegible]
Pierre J Poulin Capt.

~~the Court adjourns, [illegible] Dr. Twiddle~~

At 1640 hrs, the Court adjourns until 1000 hrs on the 2nd Nov.

On the second of Nov. 45, at 1015 hrs the Court reassembles, pursuant to adjournment; present the same members as on the 30 Oct 45.

Prosecution tenders another certificate of apprehension, dated 12 Aug 45, signed, showing arrest at Turnhout of the accused, on the 10 Aug 45, at 1445 hrs.

Same is entered as exhibit "e".

Seventh witness for Prosecution.

T-10671203. Dr. TWIDDLE, A, 142 Cy Army Transport. RASC, having been duly sworn, states:

I recognize the accused.

I first saw the accused at about 1030 hrs the 11 Sept. ~~in~~ near ~~[illegible]~~ Renais pp. ~~At the~~ pp I heard a banging in the back of the truck. I was driving. I stopped the truck, and went around

to the back to see what was wrong. I left the engine running. ~~The~~ Pte Baker said some of the load had moved, so I gave him a hand. A few minutes elapsed, and the wagon moved off. I got out and got on the running board. ~~I~~ Pte Baker switched the ignition off. The accused was driving. I was ~~arguing~~ asking why he took the truck. ~~I got for~~ The accused got out of the driver's seat and I got in. Then the accused asked me for my work ticket. I asked what authority he had for asking for my work ticket. He said he was a special police checking transport. Private Baker, and another Sgt were there. ~~He~~ The accused took my work ticket and the other Sgt said "We will go to Mons" the accused got into the cab alongside Pte Baker. The accused was sitting in the outside, Pt Baker in the middle. I saw a revolver. the other Sgt showed it in his hand and put it back in his trouser's pocket. When the revolver was in the other Sgt's hand, I was nervous. He just held it in his hands. The accused had a revolver in his tunic. It was sticking out and was pointing straight across the cab towards Pte Baker and myself.

The accused kept his hand inside his tunic. He kept taking his hand out and putting it back in his tunic again. He had nothing in his hand when he took it out, but I could see a bulge in his tunic. I was very nervous and very shaky. I drove away. I drove away because I was nervous and they kept telling to go to mess. — Both the accused and the other Sgt.
I drove along the road till I came to the road junction.
The sgt. on the running yard on my side said "turn right here"
I kept straight on and then turned left. ~~the Road~~ to the NAAFI bakery, which was down the road.

Defence.
~~When~~ After the Sgt told me to turn right, I went about 500 yards in the wrong direction.
After I started going in the wrong direction, the accused did not do anything. The accused, while we were talking about the work ticket, had the revolver completely out of his tunic. He just held it by the side of his body. He did not attempt to do anything with it. Then he put it back into his tunic.

When he was in the cab, only a piece of the fat of the pistol was showing. The Sgt on the running board was on my side of the vehicle.

~~Court~~

Prosecution – Re-examination

When I went straight ahead instead of turning right, I thought it was now or never, because the bakery was close at hand. If anything was going to happen, the whole truck would crash.

Court.

When the accused was sitting in the truck, I was very nervous, I could not tell whether the revolver was pointing ~~towards P.P.~~ directly at us or not.

RP 83 B Complied with

Pierre J Perlin Capt

Prosecution closes.

~~Defence~~ Prosecution sums up. Appx 1.

Defence sums up. Appx 2.

Summing up address by Prosecution Appx 1. [illegible]

Mr President, members of the Court.

The first charge has been substantiated by production of documents - (a) Extract of Part II Order showing commencement of AWL as 1400 hrs 4 June 45. (b) A certificate of apprehension showing termination of AWL as 1440 hrs 10 Aug 45 -

The second charge has been substantiated by 120251 Pte Baker W.J. and T. 10671203 Dvr Twiddle A who have given the following evidence, that the accused had a pistol in his tunic pointed at T-10671203 Dvr Twiddle A and Pte Baker - That Dvr Twiddle was nervous and shaky because of this. That Dvr Twiddle drove on the orders of the other Sgt with a pistol.

The Third Charge has been substantiated by 3 eye witnesses Pte Baker, S/Sgt Whitaker, Capt J C Morris who all state the accused was wearing Sgt chevrons.

The Fourth Charge has been substantiated by Pte Macdonald W, S/Sgt Whitaker, Sgt Rolfe and Capt Morris that Capt Morris was dressed as an officer with 3 pips on his shoulder, that the accused pointed a pistol at Capt Morris, that it was done in a threatening manner requiring force to take the pistol from the accused
Sgt Rolfe and Capt Morris have established that the pistol contained a round in the chamber
That the accused is of inferior rank to Capt Morris is quite clear to the court.

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5. Fifth Charge has been substantiated by L/Cpl Poultney who states he placed the accused under arrest, the accused attempted to strike him, the accused struggled and had to be forcibly carried to the vehicle. Capt J C Thomas Sgt Rolf and Pte Macdonald have all substantiated this.

From the evidence before the court. I think the court will agree with my opinion that the accused has committed 5 different offences and should be punished on all 5 charges.

Jas Waity Capt
Presenting Officer

DEFENCE Summing up App 2 GBL

Mr. President & Members of the Court.

Relative to the first charge the second certificate of apprehension (E & C) submitted by the prosecution cuts the AWL time for the first charge to 67 days 45 min.

On the second charge I do not think there is any evidence to substantiate it. Twiddle says in his evidence that the accused only had the pistol out of his tunic once, when asking for a work ticket, and then just held it against his, the accused's) body and put it back in his tunic. In the cab he did not have it out of his tunic. The evidence points to the fact that the directions were given by the Sgt on the running board. When the dvr. took the wrong road the accused did nothing. The evidence shows the pistol in the accused's tunic while in the cab was merely pointing in a general direction across the cab, which is where it naturally would point when carried in a tunic. I cannot see where this charge has been proven beyond reasonable doubt, and unless that is done the accused must be given the benefit of any doubt.

Relative to the fourth charge the evidence is very contradictory. The S/Sgt says Capt. Morris' hand was holding the accused's wrist before the pistol came out of the tunic. Other witnesses say the accused pulled the pistol from his tunic and was bringing it round in a sweeping motion when Capt Morris grabbed his wrist. All seem to be agreed that there was a very short time lapse between the pistol coming out of the tunic and Capt. Morris wresting it from him, a matter of seconds. My contention is that the accused, being annoyed by

Capt Norris' order & place his pistol on the desk was in the act of doing so when Capt. Norris, perhaps apprehensive for his safety, took no chances & grabbed the accused & wrested the pistol from him. There is no evidence that the pistol was ever pointed directly at Capt. Norris except possibly for a fraction of a second during the struggle. Once again I cannot see where this charge is proven at all, let alone beyond reasonable doubt.

As to the last charge there is evidence that Sgt Poultney more or less said ~~to the accused~~ "take a poke at him". MacDonald says the accused said he would like to fight Poultney with gloves on & Poultney said "Go ahead and try it." Poultney does not deny that he says something to the accused but does not remember just what. At any rate after this verbal exchange the accused swung at the Sgt and missed him, whereupon the Sgt hit the accused either once or twice and knocked him to the ground. MacDonald then says they carried him to the truck & that he was in no condition to offer any resistance. Sgt. Poultney says the accused may have been dazed after he hit him. The contention is that anyone being either pushed out or dazed or coming to and finding himself being carried or propelled by several people would struggle & it would be a perfectly natural reaction.

I would ask therefore that the accused be found not guilty of the second, fourth and fifth charge.

H. Hunter Capt.

E.3.

Plea in Mitigation

Appx 3. [illegible]

The accused, Rfn Ouellette, is young, having just passed his 20th birthday a few months ago. He joined the Army shortly after his 18th birthday, to wit, 6 Oct 43 and arrived overseas on 1 Jul 44. He joined the Royal Winnipeg Rifle Regiment at Caen around the middle of July 44. From the records of that unit I learn that he was evacuated sick on 16 Aug 44 at Falaise and evacuated again wounded at Calais on 6 Sep 44.

Filling in the rest of his war history from his own story he fought with C Coy 13 Pl. RWR from Caen through to Falaise where he was evacuated. He joined the Regt again at the Seine River around 1 Sep 44 and was wounded at Calais on 6 Sep 44. He rejoined the reg't before it left Calais and fought with them through to the Leopold Canal where he was taken out as a Shell shock. The unit records do not show this but they inform me the unit records are not complete on the Leopold Canal do. He went to hospital where he had a couple of operations, appendicitis & mastoid and later went to 19 Special Emp. Coy.

While at 19 Spec. Emp. he was medically reboarded and on 19 Jan 45 was classified as S3 in his PULHEMS.

On the evening of 10 Sep. he had been drinking quite heavily.

In view of these circumstances and of his extreme youth I would ask the Court to be as lenient as possible.

He wishes to go CAOF if at any time he can be released on suspended sentence.

His MFM6 has only one minor offence which occurred last Feby. and which he says.

was afterwards remitted & the 14 days pay credited back in his pay book. However his pay book is not available to substantiate this.

His Category M1 S3 is taken from his Record of Service Book.

R. Sutton Capt.

Ex "A" GBE

PART II ORDER EXTRACT FORM

TO: AB

99/20/ A5X3

27 Sep 45 19

EXTRACTS FROM: UNIT X List R W R

Part II Order No. 88 dated 6 JUL 45

ABSENT WITHOUT LEAVE
AWL from 1400 hrs 4 JUN 45

H14526 RFN OUELLETTE R G (X 3 List)

The following documents are { attached. Please acknowledge receipt on attached duplicate. required. Please forward same.

Exhibit "I"
A Thompson Capt
Officer Detailed to Take
Summary of Evidence

Originating Clerk's Initials BJS

Certified to be a true extract from the regimental books and documents in my custody.

W H Laughlin Capt
Officer IC Records
Cdn. Sec. 2 Ech. HQ. 21 A Gp.

Officer in Charge
Canadian Section, GHQ, 2nd Echelon

1/70 ECH—6 40/P&S/1276 (6704)

Exhibit "J"
Ex no. 6[illegible]
Of Thompson Capt
Officer & Detailed to Take
Summary of Evidence

APPREHENSION CERTIFICATE UNDER THE ARMY ACT, SECTION 163 (1) ~~[illegible]~~ (jj)

I certify that No. H/14536 rank REN. Name OUELLETTE

Unit "C" COY. 7th BRIGADE WINNIPEG RIFLES 3RD CANADIEN DIV. was arrested at RENAIX

at 1150 hours on 11th SEPT 1945 He was wearing CANADIEN BASTLE DRESS (SGTS CHEVRON)

(Signed) [illegible] Capt.

COMD. 281 PRO. COY. C.M. POLICE

(Unit)

Place TOURNAI

Date 11th SEPT 1945

H.14526 Rfn OUELLETTE R.G.

~~XS~~ R. WINNIPEG RIFLES (Unit) was engaged at TURNHOUT

1445 hrs on 10 Aug 45 (date) [illegible]

12 Aug 45

Signature of Provost Marshal, APM or other officer into whose custody the above-named person was taken on arrest.

244 HQ Provost Coy CMP.

Notes: 1. This certificate MUST be signed personally by the officer concerned.

2. In no circumstances may it be signed by one officer "for" another, or by anyone who does not hold substantive rank.

3. In no circumstances should the place of apprehension be described as "in the Field". The actual place of apprehension should be stated, or if difficulty is experienced in describing the place, the map reference should be given.

Ex D. 62

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).
H14526	Rfn	CUELLETTE RG	RWR 13 CBR En-att Cdn Sec HQ Brussels Grn

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 AA 40 1 times.

For 1 times.

For times.

For times.

Date of first entry in Field Conduct Sheet 8 Feb 45

Date of last entry in Field Conduct Sheet NIL

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 NIL

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 Nil days in civil custody ; and for 4 9 44 days in military custody, i.e., Nil days in open arrest, 4 9 44 days in close arrest ; of which 12 days were spent in hospital.

5. The present age of the accused is 20 years

6. The date of his attestation ~~calling up for military service~~ is 6 Oct 43

7. The service which the accused is allowed to reckon is 2 years

8. The accused is in possession of** CVSM & Clasp

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	//////

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

INSTRUCTION.—*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 AWARD UNDER SEC 47AA AND OF CASES IN WHICH TRIAL HAS BEEN DISPENSED WITH OF ACCUSED

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NO RECORD OF CONVICTION BY COURT MARTIAL OR CIVIL COURT ON MFM 6		

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 22nd 30th day of Oct 45

[illegible] Abardinny Capt

3/17 MFM 6
(AFB 172)
40/P&S/136 (5413)

No. H14526 Name OUELLETTE Raymond Gerald

Date of last entry in Company Conduct Sheet

Sqn, Battery, or Company

No. and date of last drunk

Corps INF

Period not reckoning towards freedom from extra fine

Date of enlistment 6-10-43

GC Badges

Sheet No one

Signature OC Company, etc

Service or Proficiency Pay

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
Fd	8Feb45	Rfn		AA Sec 40 - Cond to the Prej	Sgt Barrett	NS 14 dys FP	9Feb45	Maj WG White	14 dy py 149 (1b)

Certified true copy of original MFM 6

Officer having custody of Regtl Books and Documents

(PTO)

Summary of Evidence in the case of
Dvr 14526 H ~~14526~~ Rfn Ouellette, R.G. (RWR) 13 CBR Bn., CAO, charged with: (i) assault when armed with offensive weapon (A.A. sec 41); (ii) offering violence to superior offices (A.A. sec 8(2)); (iii) Resisting arrest (A.A. sec 10(3)); (iv) absence without leave (A.A. sec 15(1))

First Witness

No. T10671203 Dvr. Twiddle A., 142 Coy Army Transport, RASC, att'd 36 Fld Bakery.

I certify that in my opinion the attendance of this witness is, owing to the expense and loss of time involved, 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 "A".

A J Thompson Capt.

I do not require the attendance of Dvr. Twiddle A. for the purpose of cross-examination

R. G. Ouellette

Second Witness

No. 120251 Pte Baker W. J., 36 Fld Butchery, RASC

I certify that in my opinion the attendance of this witness is, owing to the expense and loss of time involved, 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."

A J Thompson Capt.

I do not require the attendance of Pte Baker W.J. for the purpose of cross-examination.

R. G. Ouellette

Third Witness:

No. S14690644 Pte McDonald H., 140 D.T.D. R.A.S.C.

I certify that in my opinion the attendance of this witness is, owing to the expense and loss of time involved, 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 "C"

A J Thompson Capt.

I do not require the attendance of Pte McDonald H. for the purpose of cross-examination

R. G. Ouellette

Fourth Witness:

No. S200241 S/Sgt. Whitaker, V.A., 140 D.T.D. R.A.S.C.

I certify that in my opinion the attendance of this witness is, owing to the expense and loss of time involved 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 "D"

A J Thompson Capt.

I do not require the attendance of S/Sgt Whitaker L.A. for the purpose of cross-examination.

R & G Ouellette

Fifth Witness:

No. S104357 Sgt Rolfe L.A., 140 O & D, R a & c.

I certify that in my opinion the attendance of this witness is, owing to the expense and loss of time involved 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 "E".

A J Thompson Capt.

I do not require the attendance of Sgt Rolfe L.A. for the purpose of cross-examination

R. & G. Ouellette.

Sixth Witness:

No 14335459 Dvr Fulder J., 140 O & D, R a & c:

I certify that in my opinion the attendance of this witness is, owing to the expense and loss of time involved 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 "F".

A J Thompson
Capt.

I do not require the attendance of Dvr Fielder J. for the purpose of cross-examination

R A Ouellette

Seventh Witness:

258123 Capt. J.C. Morris, O.C. 140 D.I.D., R.A.S.C.

I certify that in my opinion the attendance of this witness is, owing to the expense and loss of time involved, 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 "G"

A J Thompson Capt.

I do not require the attendance of Capt. J C Morris for the purpose of cross-examination

R. A. Ouellette

Eighth Witness:

No. 1458 5587 L/Cpl Poultney E.R., 281 Prov. Coy., C.M.P.

I certify that in my opinion the attendance of this witness is, owing to the expense and loss of time involved, 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 "H."

A J Thompson Capt.

I do not require the attendance of L/Cpl Poultney E.R. for the purpose of cross-examination.

R A Ouellette

Documentary Evidence

Certified true extract of x List RWR Part II Order No. 88 dated 6 Jul 45 is read to the accused and attached hereto as Exhibit "I".

AJ Thompson Capt.

Apprehension certificate under Army Act sec. 163 (1) (ii) is read to the accused and attached hereto as Exhibit "J".

AJ Thompson Capt.

~~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 have nothing to say

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) (F) and (G) have been complied with

In the field
3 Oct 45

AJ Thompson Capt
I/c Court Martial Centre.

LIST OF WITNESSES

PROSECUTION	T10671203 Dvr TWIDDLE A		142 Coy Army Tsp RASC
	120251 Pte BAKER WJ		36 Fld Butchery RASC
	514690644 Pte McDONALD H		140 DID RASC
	S200241 S sjt WHITAKER VA		140 DID , RASC
	S104357 Sgt ROLFE LA		140 DID, RASC
	14335459 Dvr FIELDER J		140 DID, RASC
	258123 Capt JC MORRIS	OC	140 DID, RASC
	14585587 L cpl POULTNEY ER		281 Prov Coy CMP

LIST OF EXHIBITS

Statement of T10671203 Dvr Twiddle A	"A"
Statement of 120251 Pte BAKER WJ	"B"
Statement of 514690644 Pte MCDONALD H	"C"
Statement of S200241 S sjt WHITAKER VA	"D"
Statement of S104357 Sgt ROLFE LA	"E"
Statement of 14335459 Dvr FIELDER J	"F"
Statement of 258123 Capt JC MORRIS	"G"
Statement of 14585587 L Cpl POULTNEY ER	"H"
Certified true extract of Pt 11 Order No 88 d/6 Jul 45	"I"
Certificate of apprehension	"J"

I, the undersigned acknowledge having received one copy of the Summary of Evidence and one copy of the Charge Sheet, free of charge on _____Oct 45

H-14536 Rfn OUPLLFTTF RG

I, the undersigned request the services of an officer to represent me at my trial by FGCM

I desire the services of Capt DB MacKenzie if he is available

_____Oct 45

H-14536 RFN OUPLLFTTF RG

STATEMENT

Statement of: No T/10671203 Dvr TWIDDLE A.
"A" Platoon,
142 Company, Army Transport,
Royal Army Service Corps,
att. 36 Field Bakery,
LILLE.

Who states:-

"On 11th September 1945 about 1045hrs I was proceeding from the 140 D.I.D. for the Field Bakery, accompanied by Pte Baker of 36 Field Butchery, R.A.S.C.LILLE, who was in the back of my truck a CHEVROLET 3 ton No.5175827. I heard Pte Baker banging on the back of the cab calling me to stop as the load had shifted and fallen. I got out of the cab and got into the back to give him some help. I had parked on the side of the road and left the engine running. Without any warning I heard the engine being "revved" up and the lorry moved away. I jumped out of the back just as it was moving off and managed to run and jump on the running board of the cab. In the cab I saw two Sgts who looked like Canadians from their dress, and after a struggle I managed to get the ignition turned off and bring the lorry to a halt. One of the Sgts was drunk.

After much argument they got out of the cab and producing revolvers told me to produce my work ticket. I asked what authority they had and they said that they wereSpecial Police checking up on all transport. I gave them the work ticket and one of them put it into his pocket and refused to give it back to me. He then said brandishing his revolver 'Get cracking, take us to MONS'.One Sgt got into the cab by the side of Pte Baker, with a revolver, and the other rode on the mudguard on the driving side, also witha gun watching me all the time.

One of the Sgts told me to turn right at a fork road, but as the Field Bakery was just on the left at the corner I turned left instead and drove into the Bakery and reported the whole matter to the Staff Sgt in charge.

The Sgt who had taken my work ticket gave it back to me just before the Officer came to question the two Sgts." T/10671203 Dvr A. Twiddle

I have read over the above statement and it is correct. Dvr A. Twiddle

Statement taken and signature witnessed by 7686840 Sgt KEMMENOE E. 281 PROVOST COMPANY, C.M. POLICE.

No 7686840
Sgt E. Kemmenoe

Exhibit "A"
AJ Thompson Capt
Officer detailed to take
Summary of Evidence

STATEMENT

Statement of:- No 120251 PTE BAKER W.J.
36 FIELD BUTCHERY.
R.A.S.C.

WHO STATES:-

"On the 11th September 1945 about 1045 hrs I was riding in the back of a CHEVROLET 3 ton truck No 5175827, driven by DVR. A. TWIDDLE, attached to 36 Field Butchery, acting as representative for 36 Field Butchery, drawing rations from 140 D.I.D.

On the journey betwwen 140 D.I.D. to the Field Bakery some of the rations shifted and so I banged on the back of the cab and shouted for the driver to stop. This he did, leaving the engine running.

He joined me in the back of the wagon and helped me sort out the load. It was then that I heard the engine 'rev' up and the lorry started to move off. DVR TWIDDLE thereupon jumped out of the wagon and ran up towards the cab.

Later the lorry stopped and I got out and went to the cab of the lorry. There I saw two Sgts dressed like Canadians, who were in argument with DVR TWIDDLE.

During the augument one of the Sgts ordered me into the cab at the point of a revolver tucked in his battle dress blouse. The other Sgt stood on the running board by the driver and said 'Get cracking, take us to MONS', still brandishing the revolver.

DVR TWIDDLE started off and instead of turning fork right as told by the Sgt at his side, turned left into the Field Bakery, where I got out, reported to the Staff Sgt in charge, From then the Staff Sgt took charge of the proceedings. S/120251 W.J. Baker

I have read over the above statement and it is correct. W.J. Baker

Statement taken and signature witnessed by 7686840 SGT E. KEMMENOE
281 PROVOST COMPANY. C.M.POLICE.

No. 7686840
Sgt. E Kemmenoe

Exhibit "B"
A Thompson Capt.
Officer detailed to take
Summary of Evidence

STATEMENT OF:- No S/14690644 Private McDONALD, HENRY
140 D.I.D.
ROYAL ARMY SERVICE CORPS.
RENAIX.

WHO STATES:-

"At about 1105hrs 11th September 1945 I was on duty in the Office at the 140 D.I.D. Bakery, R.A.S.C. RUE DE L'INDUSTRIE, RENAIX, when I saw two Canadian soldiers, the Regimental Policeman of the 140 D.I.D. and the driver of a truck enter the yard. The Regimental Policeman asked me where the Staff Sergeant was at that time. I did not know, so went in search of him. I arrived back in the office in about five minutes with Staff Sergeant WHITAKER.

The two Canadian soldiers, one the prisoner, OUELLETTE and another description about 5' 11", fair hair, thin features, demanded to see the Officer Commanding. Staff Sergeant WHITAKER immediately sent a messenger for the O/C, Captain MORRIS.

In the intervening time, the two soldiers asked the Staff Sergeant for oil. Staff Sergeant WHITAKER asked them to produce their credentials and the authority for obtaining oil. OUELLETTE replied 'Who the hell do you think you are, I'll knock your fucking head off for you'. We reasoned with him and told him we had sent for an Officer and that the officer would soon arrive.

In a moment Captain MORRIS arrived. He asked the soldiers to go into his office, which they did.

Captain MORRIS later asked me if I heard OUELLETTE threaten Staff Sergeant WHITAKER. I replied to the effect that I did hear OUELLETTE threaten Staff Sergeant WHITAKER.

Shortly afterwards 14585587 L/CPL POULTNEY, C.M. POLICE arrived. I then noticed that only one Canadian soldier remianed and that was OUELLETTE. The other soldier had slipped quietly away and left OUELLETTE to do the talking. I then acted as escort to OUELLETTE on the instructions of Captain MORRIS.

I heard L/CPL POULTNEY tell the prisoner OUELLETTE that he was under arrest. Afterwards I heard OUELLETTE repeatedly threaten to kill Captain MORRIS, as soon as he had the opportunity.

Shortly afterwards OUELLETTE was moved into the yard and he then made a run for the door leading out of the yard. He was stopped by Sergeant ROLFE. OUELLETTE struck out at Sergeant ROLFE and Sergeant ROLFE struck him in self defence. OUELLETTE was then forcibly restrained

Afterwards I heard L/CPL POULTNEY asking OUELLETTE to stop walking about and stand still. He then wanted to fight L/CPL POULTNEY. He squared up to him and started to lift his arm. L/CPL POULTNEY struck OUELLETTE in self defence.

OUELLETTE used very obscene language and threatened to kill L/CPL POULTNEY.

He, OUELLETTE was carried into the waiting vehicle and L/CPL POULTNEY and I escorted OUELLETTE to the C.M.POLICE HEADQUARTERS TOURNAI, During the journey OUELLETTE was very abusive and continued to threaten to kill L/CPL POULTNEY. S/14690644 Pte H. McDonald.

I have read over the above statement and it is correct. Pte H. McDonald

Statement taken and signature witnessed by 14585587 L/CPL POULTNEY E 281 PROVOST COMPANY. C.M.POLICE. on the 11th September 1945 at TOURNAI

No.14585587 ..... L/CPL, C.M.POLICE

Exhibit "C"
A J Thompson Capt
Officer Detailed to take
Summary of Evidence

STATEMENT OF:- No.S/200241 Staff Sergeant WHITAKER,V.A.,
140 D.I.D.,
ROYAL ARMY SERVICE CORPS,
RENAIX.

Who states:-

" At about 11:00hrs on the 11th SEPTEMBER;1945, I was on duty in the Bakery of the 140 D.I.D., R.A.S.C., RUE DE L'INDUSTRIE, RENAIX, when I was informed by PTE. MC.DONALD that there was some trouble with two Canadian soldiers in the yard. I immediately went to the yard and there saw two Canadian soldiers, one the prisoner, OUELLETTE and another, description about 5'11" fair hair, thin features, both wearing Sergeants' Chevrons. I was informed by Dvr. TWIDDLE that the two Canadians had attempted to steal his lorry and work ticket, and had also held them up with pistols. I asked the Canadians who they were and they said they were 'security police'. I asked them for their documents but they refused to show them. I could see that one of the Canadians was armed as he transferred the pistol from his trousers pocket to his battledress blouse pocket. OUELLETTE forced his way into the office and became very abusive. I then sent for Captain MORRIS who arrived shortly afterwards.

Captain MORRIS asked the two men to come into the office. OUELLETTE did come into the office but the other soldier slipped quietly away and I did not see him again.

Inside the office, Captain MORRIS examined OUELLETTE'S papers and told him he was not satisfied with him. By this time OUELLETTE was becoming very abusive and insubordinate towards Captain MORRIS. Captain MORRIS asked him repeatedly to place his pistol on the table. Eventually OUELLETTE brought his pistol out and pointed it at Captain MORRIS, in a very threatening attitude. Captain MORRIS wrestled with OUELLETTE and finally took the weapon off him. OUELLETTE then became extremely violent and Captain MORRIS had to forcibly restrain him, and Sergeant ROLFE went away with the pistol. During this time OUELLETTE made use of very obscene language.

At this time L/CPL POULTNEY, C.M.POLICE, came on the scene. L/CPL POULTNEY informed OUELLETTE that he was under arrest. OUELLETTE attempted to escape. I blocked his path and he struck me in the throat. OUELLETTE had to be forcibly restrained again.

Shortly afterwards OUELLETTE attempted to strike L/CPL POULTNEY, and he had to be carried to a waiting vehicle, as he would not get into it himself.

He was then taken to 281 PROVOST COMPANY, C.M. POLICE H.Q., TOURNAI, in charge of L/CPL POULTNEY.

(SIGNED)V.A.WHITAKER.Staff Sergeant
No:S/200241.

I have read over the above statement and it is correct:
(SIGNED) V.A.WHITAKER:Staff Sergeant:
No.S/200241.

I certify that the above is a true copy of statement made by No.S/200241 Staff Sergeant WHITAKER,V.A., 140 D.I.D., R.A.S.C., RENAIX, as taken down and signature witnessed by me in my A.B.466 on the 13th SEPTEMBER, 1945, at RENAIX.

No.14586587..L/CPL.C.M.POLICE.

Exhibit "D"
A Thompson Capt
Officer detailed to take
Summary of evidence

STATEMENT

STATEMENT OF:- No. S/104357 SGT. ROLFE L.A.
140 D.I.D.
R.A.S.C.

WHO STATES:-

"Whilst visiting the bakery in the course of my duty at approximately 1130hrs, 11/Sept/45, STAFF SERGEANT WHITTAKER of 140 D.I.D. BAKERY ordered me to fetch the Officer Commanding as he had in custody a soldier who I know know to be on his own statement, SGE RFN QUELLETIE who was alleged to be armed and had been causing a disturbance. Upon the arrival of the O.C. from H.Q. the O.C. interviewed the soldier, asking him for his particulars and identification papers During the questioning the O.C. asked the soldier if he were armed, found he was, and told the soldier to place the weapon on the table. At this the soldier adopted a threatening attitude, pulled the revolver from his Battle Dress Blouse Pocket with anobvious threatening intention. After a struggle the weapon was taken from the soldier, the weapon was a German Army Pistol LEUGER No 9436 which was proved and the magasine found empty but one round in the barrel or breech.

The O.C. then left the Staff Sergeant and myself having warned the soldier that he was under close arrest to guard the prisoner. whilst he made arrangements for the removal of the prisoner to the 281 Provost Company, C.M.POLICE.

During the whole of the interview between the O.C. and the prisoner, the prisoner was insubordinate, and used foul and threatening language.

Whilst the C.M.P. L/cpl was getting details of the prisoner from the O.C. the prisoner struck me in the throat with his fist and attempted to escape. I caught him by the shoulder and stopped him. The L/cpl of the C.M.Police then went to address the prisoner, and the prisoner attempted to strike him.

The prisoner was then taken to the 281 Provost Company, under close arrest. S/104357 L.Rolfe. Sgt.

I have read over the above statement and it is correct.
S/104357 L.Rolfe Sgt.

Statement taken and Signature witnessed by 7686840 SGT. E.KEMMENCE
281 PROVOST COMPANY. CIM.POLICE.

No. 7686840 Sgt. E Kemmence
C.M. Police

Exhibit "E"
A Thompson Capt
Officer detailed to take
Summary of evidence

STATEMENT OF:- No.14335459 Driver FIELDER, J.,
140 D.I.D.,
ROYAL ARMY SERVICE CORPS,
RENAIX.,

Who states:-

"At about 11.30 hrs 11th SEPTEMBER 1945, I was on duty at the 140 D.I.D. Bakery, RUE DE L'INDUSTRIE, RENAIX, when Sergeant ROLFE informed me that there was some trouble with two Canadian soldiers in the yard of the Bakery.

I went into the yard of the Bakery with the Officer Commanding, Captain MORRIS. We there saw two Canadian soldiers, one the prisoner, who has since given his name as OUELLETTE, and another soldier, both wearing Canadian battledress, with Sergeants Chevrons. The other soldier's description is:- about 5'11" in height, fair hair, thin features:

Captain MORRIS asked the two Canadian soldiers to come into the office, which they did. I also returned to the office. The O/C, Captain MORRIS, then asked OUELLETTE to lay down his pistol on the table. I could see that he was carrying a 9-m.m. Luger Pistol. OUELLETTE replied ,"Who the hell are you talking to". Captain MORRIS repeatedly asked him to put the pistol down. Eventually OUELLETTE made a dive into his side pocket of his battledress blouse and pulled out a Luger Pistol, which I have since found out to be loaded, and pointed it at Captain MORRIS. I noticed that his finger was on the trigger and he looked as though any second he would pull the trigger. Captain MORRIS made a dive for OUELLETTE, wrestled with him and eventually took the pistol off him. After that OUELLETTE was forcibly restrained as he became very violent, and was threatening everybody in the room.

At that moment L/CPL No.14585587 POULTNEY, C.M. POLICE, came on the scene. After the situation had been explained to L/CPL POULTNEY, I heard him tell OUELLETTE, the prisoner, that he was under 'close arrest'. I heard the prisoner; OUELLETTE, in the intervening time threaten to shoot Captain MORRIS and say that he would kill him the first opportunity he had. L/CPL POULTNEY told OUELLETTE to stand still as he was walking away. He replied, "I will please my fucking self what I do". Two escorts were found and OUELLETTE was forcibly restrained again:

He afterwards made a running dive to get out of the yard. Sergeant ROLFE restrained him. OUELLETTE then struck a blow at Sergeant ROLFE and Sergeant ROLFE was obliged to strike OUELLETTE in self defence.

Afterwards OUELLETTE wanted to fight L/CPL POULTNEY C.M.POLICE. He went up to L/CPL POULTNEY and 'squared-up' to him in an aggresive attitude. I saw OUELLETTE lift his arm to strike L/CPL POULTNEY and L/CPL POULTNEY struck OUELLETTE.

During the whole of this time OUELLETTE was using obscene language and he threatened to shoot L/CPL POULTNEY on two or three occasions:

OUELLETTE had to be carried to a vehicle as he would not get into it himself:

He was then taken to C.M.POLICE, H.Q., TOURNAI, where he was confined in the guardroom.

(SIGNED)..J. Fielder....Dvr.14335459

I have read over the above statement and it is correct.

(SIGNED)..J. Fielder....Dvr:14335459

Statement taken and signature witnessed by L/CPL POULTNEY, 14585587, H.Q., 281 PROVOST COMPANY, C.M.POLICE, on 11th SEPTEMBER, 1945, at TOURNAI.

(SIGNED) Edward Poultney L/CPL.14585587.

Exhibit "F"
A Thompson Capt
Officer detailed to take
Summary of Evidence

STATEMENT OF:- 258123 Captain MORRIS, J.C.,
Officer Commanding,
140 D.I.D.,
ROYAL ARMY SERVICE CORPS,
RENAIX.

Who states:-

"At about 1120 hrs on the 11th SEPTEMBER; 1945, I was on duty in the office of the 140 D.I.D., R.A.S.C., RUE ST. SAUER, RENAIX, when I was informed that there was some trouble at the Bakery Department at RUE DE L'INDUSTRIE, RENAIX, with two Canadian soldiers. I immediately went there;

Upon my arrival I saw two Canadian soldiers, one the prisoner, OUELLETTE, and another, description about 5'11" in height; fair hair, thin features. Both soldiers were wearing Sergeants' Chevrons. OUELLETTE still remained but the other soldier walked away. I was informed that both these men were armed. I asked OUELLETTE to come into the office, which he did. After ascertaining from Dvr: TWIDDLE that OUELLETTE had previously held him up with a pistol, I asked OUELLETTE to produce his credentials. I looked through his Army Pay Book and was not satisfied with OUELLETTE'S story or his documents. I told OUELLETTE that I was not satisfied with him at all and also asked him if he was armed. He replied that he was armed but refused to surrender his weapon. I told him that I should detain him and he then became very abusive towards me. I again asked him to surrender his weapon. He then pulled out a Luger Pistol from his battledress blouse in a swift movement and pointed it at me. I formed the opinion that he was in a desparate mood. I wrestled with OUELLETTE and managed to take the pistol off him. I handed the pistol to Sergeant ROLFE and then grabbed OUELLETTE and restrained him, as he became very violent. OUELLETTE'S language was very obscene and he made many threats to kill me.

Afterwards he made an attempt to escape and I also saw him strike Sergeant ROLFE in the throat.

About this time L/CPL POULTNEY, C.M. POLICE, came on the scene and the prisoner was handed over to him.

OUELLETTE made an attempt to strike L/CPL POULTNEY. He had to be carried into a waiting vehicle and was taken to 281 PROVOST COMPANY H.Q., TOURNAI, where he was detained."

(SIGNED) J.C.MORRIS Capt.

I have read over the above statement and it is correct.

(SIGNED) J.C.MORRIS Capt.

I certify that the above is a true copy of statement made by 258123 Captain MORRIS; J.C., Officer Commanding 140 D.I.D., R.A.S.C., RENAIX, as taken down and signature witnessed by me in my A.B.466 on the 13th SEPTEMBER, 1945 at RENAIX.

No.14585587.....L/CPL,C.M.POLICE

Exhibit "G"
A Thompson Capt
Officer detailed to take
Summary of evidence.

STATEMENT OF: No. 14585587 L cpl POULTNEY E R, 281 Provost Coy, C M Police.

At about 1150 hrs, I was on duty in the yard of the 140 D I D Bakery, RASC, Rue de l'Industrie, Renaix, Belgium. On information obtained from Capt J C MORRIS, I went into the bakery premises, where I found H-14536 Rfn OUELLETTE R G, and after the situation had been explained to me by Capt Morris, I immediately informed OUELLETTE that he was under close arrest.

Ouellette was extremely difficult, violently resisting arrest and once trying to run out of the yard. He struck Sergeant ROLFE in the throat and attempted to strike myself.

OUELLETTE in my presence threatened on numerous occasions to take the life of Captain Morris. He also threatened to take my life the first opportunity he had. His language towards Captain Morris and myself was extremely abusive and obscene.

It was only with the greatest difficulty that Ouelette was placed in a vehicle. In the end he had to be carried bodily to the vehicle.

I secorted him to the 281 Provost Company H Q Guardroom, Tournai, where he was confined.

When being questioned by the Officer Commanding, 281 Provost Company, CM Police, Ouellette still maintained his truculent and abusive attitude.

Ouellette produced an Army Pay Book in the name of Campbell and maintained that Campbell was his name. He was also in possession of an Army Pay Book: Part 11. In which a number of false entries had been made. After a long period of questioning Ouellette gave his correct name and also admitted being absent from his unit. He was formally charged and cautioned by Regimental Sergeant Major Kimsley, 281 Provost Company, CM Police, with absence but Ouellette made no reply.

Later that same day Ouellette was handed over to L cpl BIMSHY, No 2 L of C Canadian Provost Corps.

Ernest R Poultney

No. 14585587 Ernest R POULTNEY
281 Provost Coy, CM Police

Tournai
28 Sep 45

Exhibit "H"
A J Shrimpton Capt
Officer detailed to take
Summary of evidence

1000-92

PTE OUELLETTE V.

SCHEDULE.

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

Accused: E-28246 Pte. Valmont OUELLETTE, 6 CIRU, 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 A.A.Sec 40	Not Guilty	Guilty	
2nd A.A.Sec 40	Not Guilty	Guilty	
3rd A.A.Sec 40	Not 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 loss of kit see RP 44 fn 6.)

Not present under sentence for ~~present~~ beginning on (date) from (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 8½ 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 90 days.
90 Days DETENTION from

(Sgd) ..... 2 Mar. 44. (Sgd) ..... A.W. Mossop, 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(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 remitted to penal detention until further ordered.~~

(Sgd) W.H. Merrill Col

Date 3 Mar 44 a/ Commanding A GP. CRU

Confirming Officer.

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

Accused.	Date.	Signature of Offr.
E.28246 Pte Valmont Ouellette 6 C.I.R.U. R.C.A.S.C.	3 March 44	Lionel Major Lt. Asst. Adjt. 6 C.I.R.U.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CFAM 6 (In lieu of AFA3) 47/D.S.-N.-1608 (2864)

Convened by Order of Col. M.K. Greene A/Comd "A" Gp CRU dated 1 Mar 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.
E-28246	Pte	Valmont	OUELLETTE	6 CIRU, RCASC

PROCEEDINGS REVIEWED
J Rutherford Capt
4 Mar 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 2 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 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 ~~,~~ 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 1120 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 ~~LT.~~ A. DESROSIERS as interpreter? Ans NO.

The Interpreter is sworn.(1) Do you object to ~~LT. A. DESTROSIERS~~ 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, 187, 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. W. Mossop	2 CIRU ~~S SASK R~~
Member	Capt	J. TASCHEREAU	6-C.I.R.U. (R de Edmd.)
Member	Lt	J. CADIEUX	2-C.I.R.U. (Que Lnd.) C.I.C.
~~Waiting Member~~ ~~REPLACED~~	Lt	P.D. DELORME	2-C.I.R.U. (C.I.C)
Prosecutor	CAPT	J.R. THIVIERGE	6-C.I.R.U. (F.M.R.)
Defending Offr	CAPT	J.V. ARCHAMBAULT	6-C.I.R.U. (R de Mais)

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 E-28246 Pte Valmont OUELLETTE, 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 RaP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(severally)~~ 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(D), 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 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 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/C .....(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 SECOND 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 charge(s), and ~~allowed on the charges~~, and that, accordingly, the trial will proceed on the former, ~~but the accused is (are) found Not Guilty on the latter charges~~.(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. - give evidence. 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(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~~ 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 pieces 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 of Service as to Character and Particulars of Service(1), and certified true copy (~~extract~~) of Conduct Sheet(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 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 Ex C 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 of Service and Conduct Sheet(1), and in mitigation of punishment ?(1) Ans YES. - Defending Offr. in mitigation of punishment.(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 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.

Encl B.2

CHARGE SHEET

The accused, No E-28246, Private Valmont OUELLETTE, of the Royal Canadian Army Service Corps, on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
SECTION 40
ARMY ACT

WHILST ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

at GUILDFORD, SURREY, on the 23rd day of February, 1944, was improperly in possession of twenty (20) hand towels, the said towels being public property.

SECOND CHARGE
SECTION 40
ARMY ACT

WHILST ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

at ALGONQUIN CAMP, WITLEY, SURREY, on the 23rd day of February, 1944, was improperly in possession of twelve (12) kit bags, the said kit bags being public property.

THIRD CHARGE
SECTION 40
ARMY ACT

WHILST ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

at ALGONQUIN CAMP, WITLEY, SURREY, on the 25th day of February, 1944, was improperly in possession of eleven (11) pairs of woollen socks, five (5) drawers, short cellular, two (2) kit bags, and one (1) electric lamp, Mark I, the said articles being public property.

(W.E. MORGAN), Colonel
Officer Commanding
No 6 Cdn Inf Rft Unit

Witley, Surrey,
29 Feb 44.

To be tried by Field General Court Martial.

(M.K. Greene) Col.,
A/Comd,
"A" Gp Cdn Rft Units,
C.A.(O).

1 Mar 44
Witley, Surrey.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40/PAIN/1697 (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 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.
E-26246	Pte		Valmont	OUELLETTE	6 CIRU RCASC

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 ~~(herein)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 1st Mar 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, 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.

MAJOR (Rank.)	J. W. MESSOP (Must be named. RP 106.)	2 CIRU	(S SASK R) (Unit.)

MEMBERS.

CAPT	to be detailed by CO	6 CIRU	
LT (Rank.)	to be detailed by CO (Named or detailed. RP 106.)	2 CIRU	(Unit.)

WAITING MEMBER.

LT (Rank.)	to be detailed by CO (Named or detailed, if any. RP 106.)	2 CIRU	(Unit.)
~~XXXXXXXXXXXX~~ (Rank.)	(Must be named, if any. RP 106.)		(Unit.)

On Active Service in the Fd

in ENGLAND (Country.) M.K. Greene (Signed personally. RP 105 fn 2.) Col. (Rank.)

Date 1 Mar 44 A/Commanding "A" Gp Cdn Rft Units, C.A.(O).
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

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

I certify that I have this morning examined No: E28246 Sgt Ouellette V.
(Rank) (Name)

of 6 C.I.R.U. and in my opinion he is fit ~~unfit~~ to undergo

trial by Court Martial.

Station

Date 2-March-44

Sgd [signature]
(Medical Officer)

By the Defending Officer

The defence submits there is no evidence produced by the prosecution to prove the kit bags were in possession of the accused when found near his bed.

as the prosecution as not established a prima facie case, I would ask that the second charge be dismissed. (No reply by prosecution)

The Court is closed. application considered and disallowed.

J W Moore Major
Pres

1st WITNESS:

DUTY SWORN.

V-1543 SGT GOOD W.R. No 9 C.R.C.

Q. Identify the accused here at my right.

Q. Will you relate to the Court what happened on the 23 of Oct 45.

A. The 23rd Oct. 1945 in company of 2 CPL Carrarra of No 9 Provost Coy I was patrolling Guilford at approximately 1130 hrs The accused was checked at Guilford Sleigh Station. The accused could not produce a pass.

Q. To the Court by defending officer
Can I have the explanation of the term "checked"

A. The word checked is in Canada

The accused was checked by 2 CPL Carrarra in my presence. He stated that he was going to Cook at 6 C.A.R.D. and was on a day off. That apparently being a regiment man he did not require a pass. He was carrying a small pack. When asked what he was carrying inside it, (Objects to the effect) "What right has anybody to see what I have in possession". As the soldier was R.C.A.S. he was placed under close arrest and escorted to Guilford Civil Police Station where he was again asked the contents of his small pack. He readily opened the pack and produced from it, hand towels the exact number of which had the government stamp. When asked to produce personal property from his possession the accused produced a shaker & towels - exact number making a total of 20 towels in his possession.

Q. by prosecutor:
Could you recognize the towels or the table

A. I can identify that these names on accused. As the exhibits were not marked by me I cannot say if they are the same

Q. It has happened after that.

A. The accused was detained at Guilford Police Station where prepared to 6 C.A.R.D. Orderly Sgt and address permission to the accused guardroom and his pack was carried by an unarmed orderly. On arrival at the guardroom the number of the accused bag is 12 but bags were found to be in possession of the accused. Locked the bag and barrack locked clothes barrack bag locker. Locked the bag and barrack locked clothes barrack bag locker. The bags were removed to A. Wing orderly room so that they may be examined when the key could be obtained from the accused. 12 hot bags when the key could be obtained from the accused. 12 hot bags when the key could be obtained from the accused. 12 hot bags

2nd Witness: L-15229 L/Cpl Corcoran (M. Do G Provost Coy).

Duly sworn & Examined:

1 Q Will you tell the Court what happened on the
A. 22nd Oct 1944.

On the 23 of Oct. I accompanied Pte Smith
to Guildford on patrol, at approximately 1730 hrs
I had occasion to check the accused.

2 Q Could you recognise the accused in the room.

A. on my right.

I then asked him for a part to reply that
he did not had one, his reason was that he was a
Cpl to cook and had the day off. I then I asked him
what he was carrying in his haversack he replied
"just some of his things" when I asked him to show
me what was in the haversack he refused to show
me but eventually I had to see them, myself I called
Pte Smith and I had to see them, myself I called
Pte Smith and I had to see them, myself I called
Pte Smith and

A.: At the of his bed.

6/ Q. Could you recognised the kit bags on the table
A. they are similar

7 Q. How many are they
14

8/ Q. How many did you find in his kit
13

9- Q. and they are similar
Yes.

Cross examined.

10 Q. Were those kid bags hidden from sue
A- No.

11 Q. by defending Off. ~~Cas~~ Where did you exactly found those kid bags.
A. on the floor (12) one underneath the blanket.

12 Q. Are they the only place where you find the kit bags
A- Yes.

83 B has been completed with

3rd witness.

MAJOR S. H. Knill 2/c Adm. Wing.
6-C.I.R.O.

Duly sworn Shaker:

1- Q Would you tell the Court what happened in the 25 feb 44

A. On the 25 feb 44 I was present in A.N. aff. when the accused whom I now recognise, hand to sgt Blauffe, the keys to the padlocks with which a box, app. rizt barrack boxes and a kit bag were lock, sgt Blauffe opened the bag and the box and found 15 pairs of socks similar to those on issue and 5 pairs of shorts over and above those listed in the accused Part III there was 4 pairs of sock charge in his Part III

2- Q Could you recognised the socks on the table

A. I do they are 11 pairs non which is the in excess of the issue and 5 pairs of shorts.

2 Q by court. Are these short an excess of his issue

A. Yes.

83 b is complied with.

[signature]

4th Witness.

D-66130 Sgt. Plouffe V.D. R22 Rgt.
6-C.I.R.U.
a/t of Major at 14 Wing

Duly sworn states.

1. Q Will you tell the court what happened on the 25 feb 44 in presence of Major Knill in A. Wing Orderly Room

R On the 25 feb 44 I was detailed by Major Knill to do a bit inspection of the accused. We have found in the bed 15 pairs of new sacks, 11 pairs aside and 7 pairs of shoes, 5 were put aside, then I send Pte Ouellette to his hut to get remainder of his equipment. when he came back I put to removed 2 bit bags which were not issue to the accused.

2. Q Could you recognised
A. witness recognised the accused
Ans I forgot the search light which in-found in his bit and was not an issue.

3. Q Who was present at this bit inspection with you
A. Major Knill

4. Q Was the accused also present
A. Yes

5. Q Can you identify on this table some articles found in this bit inspection
A. Yes sir.

6. Q Are these the 2 bit bags.
Yes. the sacks similar to those found in bit, shorts are similar to the one in the bit of accused.
Camp also similar

7. Q Were this articles a surplus of his issue
A Yes. I cannot say, as I do not know the
content of his M.B. Part III

8. Q ~~Can~~ Will you look in M.B. Part III

Objection by the defence.

" sustain.

83 B. Complied with.

5th Witness

LT. H. A. VERGE 6 C.I.R.U.
C.I.C.

Duly sworn state.

1 Q What is your job.

A. I am assistant Q M. at 6 C.I.R.U.

2 Q Do you know the accused

~~[illegible]~~

Witness identify the accuse

3- Q Well you identify articles on table as public property

A. Yes

4- Q. Can you identify towels as public property

A. 20 of these are public property.

5- Q- Can you identify but bags are public property

A. No but these are similar

6- Q- What about the numbers on but bags.

A. There is on with a serial number, the other one are private numbers

7 Q. Are the sacks are public property

A. No army identification on sacks but these are similar to army issue.

8 Q Are there any identification on the sack when you receive them

A. Only the (Trade mark)

[signature]

9- Q Can you identify drawers as public property or similar

A. I can identify 3 as being public property the other ones are similar to issue

10 Q. Any markings when you receive them.

A same as towels. and sometime on by an arrow

11- Q. Has you recognised this lamp as public property

A. Yes.

12 Q and these 2 hit bags.

A. they are similar

13 Q how can you say that this man as something in excess in his hit.

A. by checking his MBI ~~an~~ with his own hit.

14 Q. Is exhibit on table charge to accused according to this MBI Part III

A. No ~~he only~~

Question by defence.

15- Q Explain how you identify the lamp as being private property.

A by arrow at the back

16- Q. Could this lamp be ~~similar~~ similar as purchase one's in shop.

A. No

17- Q the articles you identify as public property, can you sell the count that they are missing from A.M.

A. ~~No~~ No

Question by prosecution

18- Q Have you any means by which you can see that articles are missing from your store

A. Yes.

19 - Q Since when When was last check made.

A. a month ago.

20 - Q Can some articles be missing 2 or 3 weeks without you notify it.

Defence object.

(8 3 6. Camp bed with)

The accused
E28246 PTE OVELLETT VALMONT.
R.C.A.S.C. No 6-C.I.R.U.

Duly sworn states:

Q Can you tell the court how you were in possession of towels and sacks.

A. I made 6 towel repayment, and 11 towels were given to me by man proceeding on draft section B. and 3 I found around 17 to 18 feb 44 I also made repayment for at least 6 pairs of sacks.

Q by court when do you made repayment

A. I do not remember when but I was 2 year with R.A.S.C and Engineers and I purchase them at that time

Q. Can you tel Court how you came in possession of shards

A. I made some repayment a R.C.A.S.C. also Engineers and also at 6-C.I.R.U.

Q by court
I know often did you had a kit Inspection.

A. Yes I had a kit inspection when I first arrive here at that time my kit was not complete and I was forced to return to R.C.A.S.C. to complete same kit

Q. Court
If hy were you short of kit when you arrived
A. At that time I only had one kit bag. I brought everything I could with me I was forced to leave remainder of the kit at the army service corps. After this kit inspection I had to go back and get the rest of my kit, so I made a repayment for one kit bag and went to get my thing on a 56 hrs leave.

Q. By defending
Can you tel court how you came in possession of the lamp.
A. The lamp was left in the kitchen where I am a night cook and I use it for a couple of nights until the batteries were worn out. As nobody claimed the said light I brought it to my hut.

Q. Can you tel the court how you came in possession of the kit bags.
A. The kit bags were not in my possession when we arrived in that hut in the first week of kit. a number of kit bags and pailliasse were there.

Q. By prosecutor.
Tell you tel me when you had your last kit inspection
A. I cannot tell you approximately 2 months ago
Q. Do they often make kit inspection in this camp
A. I have been here 9 months and this was the ~~first~~ only kit inspection I was aware of ~~the~~ with the exception of the one I had on my arrival

Q. What articles were you deficient when you arrive

A. As far as I can remember I was short of sacks, towels, summer drawers one pair of woollen drawers and one ground sheet.

Q. Is it the customary to leave equipment behind when you leave a camp

A. When we have permission by a Sgt Major to leave some bit behind because we have no way of carrying it.

Q. ~~It has could~~ - If so what reason did you have [illegible]

Q. What is the usual procedure when making ~~for~~ repayment

A. When we need some articles we make a demand for it and the articles are given to us on repayment,

Q. Do the Q.M. check in your book when you buy something

A. No Sir he simply asks us if it was issued to him.

Q. When you whent for these repayment was the question to you

A. I do not remember.

Q. How can you explain when I just ask you what the Q.M. usualy demand and now you say I do not remember.

A. I have been in for 3 years now and I have done a lot of repayment sometimes he does and sometime he does not

Q. At what occasion and why were the towels given to you by the soldiers.

A. I knew that the said soldiers were proceeding

one's draft and I ask them if they had any-
thing to give away

Q. I lot open on a bit inspection when you have
towel over you issue.

A When bit inspection occured I never had towels
over an above issue

Q. ~~When did you keep the clean towel during~~.
When you have a surplus of towel where
do you keep them during bit inspection

A I have not had a bit inspection since having
a surplus of towel

Q. Where did you have the 20 towels and where
were you keeping them

A - I kept them in my bit bags

Q. What were you doing with them

A Ever since I am in possession of them I
left the towels in my bit bag up to the time
I brought them to town.

Q. Why did you bring them to town

A I was bringing them to the laundry

Q. Have you the right to have so many towels

A. I consider that every thing that is given
to me and part by me is my property.

Q. You said that the bit bags were in the ~~room~~ hut
how long have they been there

A. When we ~~arrive~~ move there the bit bags were there

Q. ~~Where~~ are the paillasse still in the room
when you had your bit inspection.

A. When I was put under arrest on the 23 of pls the
paillasses were still there.

Q. For what reason were the kit bags near your bed
A. For the reason that they were there when we came there.

Q. Did you had kit bags at any other place beside those around your bed
A. I had one in the locker and the other with my cloths

~~Q. How many kit bags were you used with~~

Q. by the court

When the towels were found on your in Guilford were they dirty or clean.
A. The towels were as they were ~~then~~ are now.

1st WITNESS FOR DEFENCE
D-36072 PTE MARCHAND C. 6-C.I.R.O.
(F.M.R.)

Duly sworn states.

Q. Do you know the accused and identify him
A. Indentify
Q. Have you seen any one give towels and sachs to the accused
A. Yes
Q. At what occasion.
A. Just before the last draft left for overseas
Q. Where did that took place
A. Here in the camp.
Q. More exactly
A. In a hut in front of No. kitchen
Q. by prosecution.

Did the accused ask for those articles or were they given to him voluntary

A. I remember him saying "have you any gifts for me"

2nd WITNESS.
E930 V. ROY PTE (R. de Chaud.)
6-C.I.R.O.

Duly sworn states.

~~[illegible]~~
~~[illegible]~~

Accused Identified by witness.

Q. Do you sleep in the same hut as the accused

A. Yes sir

Q. When you move to another hut at the same time as the accused did you notice something there

A. I remember seeing more bed some kit bags I dont not take said bed, because I thought that the occupance of that bed have not moved out yet.

Q. Can you remember how many kit bags were there

A. No.

Q. Were there more than 2.

A. I could not say ~~there was~~ ~~if there were~~ ~~more~~ there were some kit bags there

Q. by prosecutor

Q. Were the kit bags always at the same place

A. I do not know.

Q. Do you sleep in same barrack as the accused

A. Yes.

2nd Witness
D. 41070 LAFLEUR H. Pte 6 C.I.R.U.

Daily swarm shaker.

The witness identify the accuse

Q. You sleep in same hut as the accused
A - Yes.
Q. When you move in new hut at same time as the accused did you notice any thing
A. No
Q. Was there any equipment in the hut
A - I saw a couple of hot bags on my bed.

by prosecution.
Q. Where did you put those hot bags.
A - I put them in my desk.
Q. Did you see any other hot bags in this same hut
A. No.
Q. Do you sleep far from the accused.
A. I am his neighbour.
Q. Again you never notice any thing abnormal around your bed
A. No.

Closing address for the Defense

Mr. President, Gentlemen of the Court.

The accused E 28246 Pte. Ouellette J. is charged with being improperly in possession of articles being public property. May I point out to the Court that there are no articles in N. R. Can. which prevents a person subject to Military Law of having in his possession articles being public property in excess of the regular issue. I refer the Court to page 23 of the M.M.L. Ch. III & quote "The accused may show that he obtained the articles in a bona fide transaction, or that he found them apparently without an owner and without any name or mark on them by which the owner could be found". I believe ~~that~~ the defense has proved conclusively that the accused did come into possession of the articles in a lawful manner. The fifth witness has stated that to his knowledge the articles found in the accused possession were not missing

Over

from the Q. M. stores and the prosecution has certainly not brought out that the articles were acquired illegally. The fifth witness has also failed to indentify as public property some of the articles found in the accused possession, viz: the socks the kit-bags and two pairs of drawers. The first and second witnesses failed to agree as to where the kit-bags were found and the prosecution has failed to prove that said kit-bags were public property and in actual possession of the accused.

Therefore Mr. President, I ask the Court to find the accused "not guilty" of the charges made against him.

Respectfully submitted,

Guy V. Archambault Capt
Defending Officer.

Address by examiner:

on the 23 of Oct. A Q Guilfoyle was found in possession of certain firearms & ammunition & 20 rounds of .22 ball cartridges which have been identified by A.M. as being similar to, & in the same condition as those issued by the A.M. as being suitable for the purpose of killing rabbits. On the 25th Oct. Guilfoyle was in possession of 11 rounds of .22 ball cartridges & 2 .22 Long, all identified by the A.M. as being suitable for killing rabbits

1st Witness as to character.

D-106195 Sgt Rousseau (Army Service Corp)
6.-C.I.R.U.

Duly sworn & tole:

The accused is identified

This man as been working for me since the 5th of may 1943 as a cook one of my best cook is has been in charge at night since he has been with me, I am very satisfied of this man, he was doing his duty, I have recommended him to be Corporal.

Mr President Gentleman of the court, you have heard the witness speak in most favorable terms about the accused, I beg the court to take into consideration the fact that the accused has been in service for nearly 4 years during which there are only 2 minor charges against him, I contest that the accused has been a victim of unfortunate circumstances, I also beg the court to take the consideration the fact that the accused has been in custody awaiting trial (civil custody 12 hrs and 8 days in local guard room. Therefore Mr President I ask the court to be lenient in handling out the sentence to the accused.

[illegible]
Pres

SUMMARY OF EVIDENCE

In the case of No E-28246, Private Valmont GUELLETTE, of the Royal Canadian Army Service Corps, on the strength of No 6 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.

U-1543 Sgt GOULD, W.E., of the Cdn Provost Corps, on the strength of No 9 Provost Company, having been duly sworn, states as follows:

About 1130 hours on 23 Feb 44, accompanied by Cpl CORCORAN, I was on duty on GUILDFORD High Street, when I saw the accused, whom I now recognise. We checked him for a pass, and the accused answered that he did not have a pass, that he was a night cook and that he was on day off. He was then asked what he had in a small pack that he was carrying. He did not readily comply with our request and seemed to question our right to this question, saying, "Why do you want to know what is in the pack", or words to that effect. We placed him under arrest and took him to GUILDFORD Police Station, where we asked him to open his pack. He opened the pack and produced fourteen hand towels. When asked to remove his personal property from his pockets, he produced a further six towels from his tunic. I hereby produce as Exhibit "A" the 20 towels [illegible] possession of the accused. I reported to "A" Wing Orderly Room at No 6 CIRU, notifiedthem for an escort and obtained permission to examine the kit of the accused in his hut. Accompanied by the Orderly Corporal and Cpl CORCORAN, I examined the accused's kit and found thirteen kit bags in the immediate vicinity of his bed. One kit bag was locked. It was removed to "A" Wing Orderly Room together with a barrack box which was also locked. I hereby produce as Exhibit "B" the twelve kit bags found among the accused's kit in excess of the normal army issue.

The accused declines to cross-examine this witness.

.....Sgt

Second Witness for the Prosecution.

Z-15229 L/Cpl CORCORAN, M., of the Cdn Provost Corps, on the strength of No 9 Provost Company, having been duly sworn, states as follows:

About 1130 hours on 23 Feb 44, in company with Sgt GOULD, I was on duty on GUILDFORD High Street, when I saw the accused, whom I now recognise. We asked him what he was carrying in a haversack which he was carrying. He replied that it was just something of his own. When we asked to look what was in the haversack he wanted to know what authority we had to do this. We placed him under arrest and escorted him to GUILDFORD Police Station, where we asked him to open his haversack. This he did and produced fourteen hand towels. He had six more towels underneath his greatcoat. We then proceeded to No 6 CIRU, leaving the accused in custody of the civilian police. At No 6 CIRU we obtained permission to examine GUELLETTE's kit, in company of the Orderly Corporal. We found thirteen kit bags among his kit. One kit bag was locked. It was removed, together with a barrack box which was also locked, to the Orderly Room for examination. The kit bags that we found were similar to those which are marked Exhibit "B" and the towels found in the accused's possession were similar to those marked Exhibit "A".

The accused declines to cross-examine this witness.

.....L/Cpl

Third Witness for the Prosecution.

Major J.H. KNILL, General List, on the strength of No 6 CIRU, having been duly sworn, states as follows:

On 25 Feb 44, I was present in "A" Wing Orderly Room, when the accused, Whom I now recognise, turned over to Sgt PLOUFFE the keys to a barrack box and a kit bag which were in the said Orderly Room. Sgt PLOUFFE opened the box. In it were the following articles in excess of his army issue: eleven pairs of socks, woollen, which I hereby produce as Exhibit "C"; five pairs of drawers, cellular, short, which I hereby produce as Exhibit "D".

The accused declines to cross-examine this witness.

.....Major

SUMMARY OF EVIDENCE

In the case of No E-28246, Private Valmont OUELLETTE, of the Royal Canadian Army Service Corps, on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

Fourth Witness for the Prosecution.

D-66120 Sgt FLOYDE, J.D., of the Canadian Infantry Corps, on the strength of No 6 CIRU, having been duly sworn, states as follows:

On 25 Feb 44, in the presence of Major KNILL, I inspected the contents of a barrack box and kit bag which were in the Orderly Room of "A" Wing at No 6 CIRU. I found the following articles in excess of his army issue:

(a) Eleven pairs of socks, woollen, whichare similar to those produced as Exhibit "C".

(b) Five pairs of drawers, cellular, short, which I hereby recognise as Exhibit "D"

(c) One lamp, electric, mark I, which I hereby produce as Exhibit "E".

(d) Two kit bags, which I hereby produce as Exhibit "F".

The accused declines to cross-examine this witness.

.....Sgt

Fifth Witness for the Prosecution.

Lt H.A. VERGE, of the Canadian Infantry Corps, on the strength of No 6 CIRU, having been duly sworn, states as follows:

I am Assistant QM of 6 CIRU. I hereby identify the 20 towels marked Exhibit "A" as being public property. I am also able to identify three of the drawers, cellular, short, produced as Exhibit "D" as being public property. The other two pairs I cannot positively identify as public property, although they are similar to those issued in the army. I identify the 14 kit bags produced as Exhibit "B" and "F" as army property, and also the lamp, electric, Mark I, marked Exhibit "E", but I cannot identify the 11 pairs of socks (Exhibit "C"), although they are similar to those issued by the army. I hereby produce as Exhibit "G" an MBM I, Part III, made out in the name of E-28246 Spr OUELLETTE, V. The list prices of the articles produced as Exhibits are as follows:

Towels hand (each)	$ .69 .82
Bags, kit (each)	1.02
Socks, woollen (pr)	.37
Drawers, cellular, short (each)	.43
Lamp, electric, Mark I (each)	.67

The accused declines to cross-examine this witness.

.....Lt.

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

The accused declines to make a statement and reserves his 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), (F), and (G) have been duly complied with.

.....Lt.
Officer detailed to take the Summary of Evidence.

Witley, Surrey,
29 Feb 44

MPW/JLN

MFM 6 (AFB 122) 40/PAM/136 (3438)

No. E-28246 Name GUILLETTE, Valmont Sqn, Battery, or Company — Corps R.C.A.S.C. — Date of enlistment 1 Jul 40 — GC Badges 1 — 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 1 — Signature GC Company, etc J.G. Power. Col. — 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		A.A.40 Conduct to the prejudice of good ord er and military discipline (Des obey unit standing orders)	Documentary	2 days pay.	11 Jan 43	DO 3/43	
Field	13 Dec 43	Pte		A.A.15(1)A&L from weekly inspection of cooks sct.	Documentary	7 days C.B.	15 Dec 43	Lt. J.Gevan Power	

Certified true copy consisting of one sheet dated: 29 Dec 43

.....
Officer having custody of original documents.

(PTO)

Exhibit P.6.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
E-28246	Private	Valmont OUELLETTE	Royal Cdn Army Service Corps.

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 hereof stated should correspond with the numbers as entered 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.

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

	* Within last 12 months.	*Since Enlistment.
For A.A. 15 (1) aWL	1 times	1 times.
For A.A. 40	Nil times	1 times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, 1

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~~

~~imprisonment with hard labour~~ ~~for~~ ~~imprisonment without hard labour~~ ~~commencing on the~~ ~~day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for 12 hrs days in civil custody, and 8 days and 12 hrs days in military custody, making a total of of which, N/A. days were spent in hospital.

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

6. The date of his ~~enrolment~~ attestation specified in his ~~record of service~~ attestation paper is 1 Jul 40.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 years 235 days

8. The accused is entitled to deferred pay or gratuity in respect of 3 years 235 days service.

9. The accused is entitled to reckon 3 years 235 days 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 the following military decoration or award:~~ Cdn Vol Med & Clasp

11. ~~*If the accused is a warrant officer.* The accused before he was made a warrant officer 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~~

(*18300) W1.10582/144 125,000 8/41 A.&E.W.Ltd Gp.498

00

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. E-28246 Rank Private Name Valmont GELLETTE of R.C.A.S.C. 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.
		Not applicable		

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 29th day of Feb 44

for officer having custody of original documents.

13. The accused 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 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 sources as are available and the paragraph concerned amended accordingly.*)

III 73

PTE OULDS DO

B-1.

Edward Rawlings Maj

RECORDED AT CMHQ IN AB 160 III-73

E61

Correspondence to be PINNED here

Army Form A.3

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

PROCEEDINGS

On Active Service, this Ninth day of March, 1944

Order convening the Court.

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; [redacted]

* 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.

[redacted]

PROCEEDINGS REVIEWED
H. C. Inch Lieut
27 Apr 44 Rev 3
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

President

Rank	Name	Regiment
Major	E.C. Rawlings	48 Highrs

Members

Rank	Name	Regiment
Captain	D.C. Smith	Hast & PER
Lt.	C.G. Cooper	R.C.R.
Lt.	P.H.A. Hertzberg	R.C.R.

Waiting Member

* 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 D. C. Spry
(D.C. Spry) Brigadier
Commanding 1 Cdn Inf Bde
Convening Officer.

PMEO/50,000—3/42

E61

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 117698 PRIVATE OULDS, Douglas Oliver The Royal Canadian Regiment.	FIRST CHARGE A.A. Sec 15 (1)	Guilty	Guilty suffer to ~~undergo~~ Thirty Days Field Punishment and a forfeiture of 30 days pay Edward Rawlings May	Confirmed D. C. Spry Brig 15 March 1944

*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) D. C. Spry (D.C. Spry) Brigadier
Commanding 1 Cdn Inf Bde
Convening Officer (e)

(Signed) Edward Rawlings May (E.C. Rawlings) Major
48 Highrs
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 11th day of March 1944, 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)~~ ER
*~~(4. The officers under instruction)~~ ER

were duly sworn.

* Omit if not applicable

Signed this 11th day of March 1944

Edward Rawlings May
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.~~ ER

~~Signed this day of 19~~

~~*President of the Court Martial.*~~

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

D Confirmative

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.~~) MG

* 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 Fifteenth day of March 1944

D. C. Spry
Confirming Officer.
(D.C. Spry) Brigadier
Comd., 1 Cdn Inf Bde.

Promulgated and extracts taken in the case of A 117698 Pt Oulds D.O.

(a) (Dated) 16 Mar 44 (Signed) A. Sherrie Lallaway Maj

Promulgated and extracts taken in the case of

(Dated) NA (Signed) NA

Promulgated and extracts taken in the case of

(Dated) NA (Signed) NA

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

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

A

Army Form A 9.

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

Proceedings of a Field General Court-Martial held ~~at~~ in the field, on the 11th day of March 1944 by order of D.C. Spry Brigadier

Commanding 1 Cdn. Inf. Bde.
dated the 9th day of March 1944.

President.

Major E.C. Rawlings 48 Highrs

Members.

Captain D.C. Smith Hast & PER.
Lt. C.G. Cooper. R.C.R.

Trial of* A117698 Pte. Oulds Douglas Oliver, ~~Judge Advocate~~.
The Royal Canadian Regiment

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 & 23.

The accused is brought before the Court.

Prosecutor,† Lt. E.H. Shuter R.C.R.

~~Counsel~~‡ or defending officer† Lt. W.D. Lawrence. R.C.R.

At 1045 o'clock the Trial commences.

The order convening the Court is read, and is marked B-1 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.

(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.

20957. Wt.W41820/21 10,000 sets. 12/41. K. & H., Ltd. G657/11. Forms A9/55.

B

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

~~The following officers under instruction are duly sworn.~~

Charge-Sheet.

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

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

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.

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.

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.

B-2
Edward Rawling Maj

CHARGE SHEET.

The accused, No.A117698, Private Douglas Oliver OULDS, The Royal Canadian Regiment, a soldier of the Canadian Army Overseas, Central Mediterranean Forces, is charged with -

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

WHEN ON ACTIVE SERVICE,
ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

in the field, on 31 Jan 44, absented himself without leave from 1200 hrs., 31 Jan 44 until surrendering himself to No.1 Provost Coy. at 1300 hrs., 10 Feb 44.
(Time absent - 11 days, 1 hour)

Dated in the field, this 9th
day of March, 1944.

W. Mathers.

(W.W. MATHERS) Lt.-Colonel,
Comd., The Royal Canadian Regime nt.

To be tried by Field General Court Martial.

D.C. Spry

(D.C. Spry) Brigadier
Comd., 1 Cdn Inf Bde.

In the Field
9 Mar 44.

B-3

MEDICAL OFFICER'S CERTIFICATE
(KR (Can) para 577)

I certify that I have this morning examined No... A117698.....

Rank... Pte.....Name... OULDS... D.O..... of The Royal Canadian Regiment

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

Station... In the Field....

Date.... 11 Mar 44.....

D Clamour Cpt.
(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 A11 7698 Pte. Oulds Douglas Oliver is found guilty of absenting himself without leave.

†The summary ~~(or abstract)~~ of evidence is read, marked B - 6 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 :—

no statement

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

Instructions.

† 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.

-no.

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 closed for the consideration of the finding.~~

~~The Court find that the accused~~

Proceedings on Conviction *before Sentence.*

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

Evidence of character, &c.

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

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.*

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.

Statement as to character and particulars of service and MFM 6 duly certified in accordance with CARO 3131 were produced and marked as exhibit B4 and B5

[Instructions.—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.* No

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused

Sentence.

To suffer 30 days Field Punishment and to forfeit 30 days pay.

Exhibit "A"

CERTIFICATE OF SURRENDER

This is to certify that A 117698 Pte CULDS, D.O., R.C.H. surrendered himself to this unit as an absentee from the R.C.H. at 1300 hrs, 10 Feb 44.

Cpl.

C 42052 Vessey R.T.
No 1 Provost Coy

B-6 Coward Rawlings
May

Summary of Evidence

in the case of

A117698 Pte. Oulds D. Douglas Oliver, a soldier of the Canadian Army, on Active Service.

By direction of the Commanding Officer the evidence is taken on Oath

1st Witness For Prosecution

~~R.S~~ P170944 R.S.M. Lovington V. G., The Royal Canadian Regiment, having been duly sworn, states:—

I am the R.S.M. of The Royal Canadian Regiment On the 31st Jan 1944 at about 1200 hrs. I had occasion to look for the accused in order to issue him some kit. I could not find him. I made inquiries in the area but he had not been seen. I thought no more of it at the time as I thought he might be out on patrol work as a scout. The following day I again looked for him & he could not be found and on inquiry I found he had not been in for meals. I checked his kit & found that most or all of his

No 2

kit was gone therefore I reported him absent without leave as from 1200 hrs 31st Jan 1944

V.G. Lewington

The accused declines to cross-examine the witness

2nd Witness for prosecution Captain A. W. Roy, The Royal Canadian Regiment, having been duly sworn, states:

I am Adjutant, The Royal Canadian Regiment. I produce a certificate of surrender signed by Cpl. R.T. Vessey #1 Prov. Coy. certifying that the accused of whom I recognize surrendered himself as an absentee from the R.C.R. at 1300 hrs 10 Feb 44. (Marked Exhibit "A" and attached to the summary)

AW Roy Capt.

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 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."

in accordance with Rule of Procedure 4(C), declines to make a statement or give evidence on Oath.

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

Taken down by me, in the presence of the accused, this 28th day of Feb/944

J. F. Sherlock Capt.
Officer Taking Summary

B-5
Edward Rawlings May

No. A117698 Name GULDS, Douglas Oliver Sqn., Batty., or Company } Corps Inf Date of enlistment } 20-3-43 Sheet No. 1

Date of last entry in Company Conduct Sheet } 13-8-43 No. and date of last drunk } G.C. Badges } Long Service and G.C. Pay } Signature O.C. Company, etc. } (Sgd) D.R. LADORE, 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
				Old sheet destroyed 14-9-43.	(Sgd) D.R. LADORE, Capt.				

I certify that the above is a true copy of the original under my care.

A.W. Roy Capt

(A.W. ROY) Captain,
Adjt., The Royal Canadian Regiment.
3 Mar 44.

Army Form B.122

P.T.O.

B-4.

Edward Rawlings May

M.F.B. 388
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 290

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number A-117698 Rank Private Name OULDS, D.O. Regiment (or unit) R.C.R.

1. The following is a fair and true summary of the entries in the ~~Service and Regimental Regimental and Squadron Battery~~ Field 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 ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	No record, old	times	No record, old	times
For	M.F.M. 6 destroyed 14 Sep 43.	times	M.F.M. 6 destroyed 14 Sep 43.	times
For	Last entry d/13 Aug 43.	times		times
For		times		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. Nil.

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.

~~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 ~~30~~ 26 days in ~~Air Force~~ military custody, making a total of ~~30~~ 26 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, 8 months

6. The date of his ~~commission~~ attestation specified in his ~~record of service is~~ attestation paper 20 Mar 43.

7. The service which the accused is allowed to reckon towards discharge is 358 days [illegible] 3 49

8. The accused is entitled to reckon 358 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 ~~[illegible]~~ military military ~~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~~ ~~Air Force~~

~~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 A-117696 Rank Fte. Unit

Name Douglas Oliver OULDS of The Royal Canadian 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

Fil.

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 March, 1944

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.

(W.W. MATHERS) Lt.-Colonel,
Comd., The Royal Canadian Regiment.

COUNTER NUMBER 5-58898

HOUR 12:05

OPERATOR'S INITIALS ER

RELIEVING OPERATOR LS

40-14

Rfn. Ough L. E.

SCHEDULE.

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

Accused: B144430 Rfn Leonard Emerson OUGH

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.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 ..... 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 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 be imprisoned with hard labour for a period of two (2) years.

(Sgd) ..... Judge-Advocate, if any. 6 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 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 "to be imprisoned with hard labour for a period of one year," and I confirm the Finding and Sentence so varied.

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

(Sgd) [signature] Brig

Date 7 Feb 45 Commanding 8 Cdn Inf Bde Confirming Officer.

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

Accused.	Date.	Signature of Offr.
B 144430 RFN OUGH L E	8 FEB 45	[signature] Lt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 42-14
Office of the Judge Advocate General
Army Group
RECEIVED 7 MAR 1945 JAG BRANCH C.M.H.Q.
PROCEEDINGS REVIEWED Date 7 Mar 45 Army Group

FIELD GENERAL COURT-MARTIAL

4138B

Convened by Brigadier J.A. Roberts Comd 8 Cdn Inf Bde dated 4 Feb 45

ACCUSED.

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

Number.	(a) Permt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B144430	Rfn	Leonard Emerson	OUGH	Regt of C

PROCEEDINGS REVIEWED 9 Mar 45 [signature] MAJ

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

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 6 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 21/113

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 ROs. For guidance as to procedure where variation in this fcgp arises, see form for GCM in MML pp 741 to 758. A brief record of such variation will be made and given a number having reference to one appropriate of a preceding para number herein. See back of Convening Order, CF A93, 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 1410 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 (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	Major	R.D. MEDLAND	R.C.A.S.C.
Member	Capt	R.M. LAVIGNE	R de CHAUD
Member	Capt	H.J.C. RUTLEDGE	R de CHAUD.
Judge-Advocate		K/A	
Prosecutor	Capt	H.G.W. BEAN	Q.O.R. of C
Defending Offr	Lieut	W. CAMPBELL	Q.O.R. of C.

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 DI p 3.)

A8. The accused ~~Number~~ B144430 Rfn OUGH Leonard Emerson, 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.(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 A F

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(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 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 2, 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 60(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(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 3 and Ex 4 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(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, B144430 Rfn OUGH, Leonard Emerson
1st Bn The Queen's Own Rifles of Canada, 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, did absent himself without leave
from 1730 hrs 27 Dec '44 until being apprehended
at 2230 hrs 18 Jan '45. (Total time absent - 22 days
5 hours)

In the Field
3 Feb '45

(S M LETT) Lt-col
Comd 1st Bn The Q O R of C.

To be tried by Field General Court Martial.

4 Feb 45

(J.A. Roberts) Brig
Comd 8 Cdn Inf Bde

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.
B144430	Rfn		Leonard Emerson	OUGH	QOR 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*) 4 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 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. ~~If unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have stated herein~~

(*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.*)

4. Due to the exigencies of the service it was necessary to appoint, as president, an officer from the unit of the accused.

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	~~Maj~~ W. J. Weir	QOR of C

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	R.M. Lavigne	R de Chaud
Capt	O.J.A. Woodcock	N Shore R

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	H.J.C. Rutledge	R de Chaud

JUDGE-ADVOCATE.

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

On Active Service in the Fd

in Holland (Country.)

Dat 4 Feb 45

(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Commanding 8 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

1ST BN THE QUEEN'S OWN RIFLES OF CANADA

6 Feb 45

In the Field

MEDICAL INSPECTION FOR FITNESS TO UNDERGO TRIAL BY COURT MARTIAL

This is to cetify that I have this day examined B144430 Rfn Ough, L E of the Queen's Own Rifles of Canada, and have found fit to undergo trial by Court Martial.

To report at 1800 hrs for treatment of axillary adenitis

J. G. Edmonson Capt RAMC.

Medical Offr

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

Statement in Mitigation of Punishment

The accused, a volunteer, landed with his bn. on 'D' day & has fought most of the ensuing actions. He is a good soldier, never failing to do his job, he has served faithfully and well.

Council herewith renders a Plea of Clemency on behalf of the accused.

W. R. Campbell Lt.
Defending Officer

Page 1

Summary of Evidence

in the case of B-144430 Rfn Augh. L. E.
of the 1st Bn G.O.R. of C. CA(O) B.W.E.F.

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

First Witness B-34321 A/Sgt. Harris C 1st Bn GOR of C having been duly sworn states:

I am Pl. Sgt. of 13 Pl C Coy GOR of C of which Rfn Augh, whom I now recognize, was a member. About noon on the 27th Dec 44 Rfn Augh returned to the Pl. from the R.A.P. He was not present at supper time the same day and when we checked the platoon he was found to be missing. This was at approximately 1730 hrs. He has never been present in the platoon since then.

J Harris (Sgt).

The accused declines to cross-examine this witness.

A Certificate of Arrest in accordance with A.A. 163 (1) purporting to refer to the accused,

is produced and read to the accused, marked Exhibit "A", and signed by me.

George W Bean Capt.

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 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 declines to make a statement or to give evidence.

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence consisting of two pages has been 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.

George W Bean Capt
137 Bn Queen's Own Rifle of Can.

In the Field
2 Feb 45

Exhibit "B"

SUMMARY OF EVIDENCE

in the case of B144430 Rfn OUGH, L E, 1st Bn The Queen's Own Rifles of Canada, CA(O) BWEF

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

FIRST WITNESS B39321 A/Sjt HARRIS, C, 1st Bn The QOR of C, having been duly sworn states:-

I am Pl Sjt of 13 Pl, "C" Coy, 1st Bn The QOR of C, of which Rfn OUGH, whom I now recognize, was a member. About noon on the 27th Dec '44 Rfn OUGH returned to the Pl from the R.A.P. He was not present at supper time the same day and when we checked the platoon he was found to be missing. This was at approximately 1730 hrs. He has never been present in the platoon since then.

The accused declines to cross-examine this witness.

C. Harris, (Sjt)

A Certificate of Arrest in accordance with AA 163(i) purporting to refer to the accused, is produced and read to the accused, marked Exhibit "A", and signed by me.

George W. Bean, Capt.

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 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 declines to make a statement or to give evidence.

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence consisting of two pages has been 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.

George W. Bean, Capt
1st Bn The Queen's Own Rifles of Canada

In the Field
2 Feb '45

CERTIFICATE OF ARREST IN ACCORDANCE WITH ARMY ACT, SECTION 163 (i) (jj)

Exhibit "A"

Certify that No. B 144430 Rank PTE Name OUGH L.E.

of (Unit) THE QUEEN'S OWN ~~REGIMENT~~ RIFLES was arrested at BRUSSELS

22.30 hrs on 18TH JAN 45 (date). He was dressed in Uniform

Date 18th JANUARY 1945

Signature of Provost Marshal APM or other officer into whose custody the above named person was taken on arrest.

M. Lavan Lt
(Rank)
(Unit or Appointment)
COMMANDING 120 PROVOST COY. G.H.Q.

NOTES

1. This certificate MUST be signed personally by the Officer concerned.
2. In no circumstances may it be signed by one officer 'for' another, or by anyone who does not hold commissioned rank.
3. In no circumstances should the place of apprehension be described as 'In the Field'. The actual place of apprehension should be stated, or if difficulty is experienced in describing the place, the map reference should be given.

187B

Exhibit "C"

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
B144430	Rfn	OUGH Leonard Emerson	1st Bn The Q O R of C

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 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) AWL Two times Two 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 No days in civil custody, and ~~26~~ 19 days in military custody, making a total of ~~16~~ 19 days, of which No days were spent in hospital.

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

6. The date of his ~~commission~~ attestation specified in his record of service ~~attestation paper~~ is 18 Mar 43

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A 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

~~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 ----------~~

(*25800) Wt.34898/1790 20,000 10/43 A.& E.W.Ltd. Gp.698
(26906) Wt.55984/1499 12,000 3/44 " "

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. B144430 Rank Ffn Name OUGH L E of QOR of C 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.
		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 3rd day of February '45

(S M LETT) Lt-col
Comd 1st Bn The QOR of C

15. The accused has not been 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 collected from such sources as are available and the paragraphs concerned amended accordingly.)

3/17 MFM 6 (AFB 127)

No. B144430 Name OUGH L E | Sqn, Battery, or Company: C | Corps: CIC | Date of enlistment: 18Mar43 | GC 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: D.M. Smith, Lt

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or remission of punishment	By whom awarded	Remarks
Sheet Destroyed 18 Sep 43 Last Entry N/A Cases of Drunkenness Nil						D M Smith Lt.			
Camp Bordon				Voluntary Blood Donor 10 Jul 43		D M Smith Lt.			
Field	15May44	Rfn		(1) AA 15 (1) AWL from 1700 hrs 15 May 44 until 2030 hrs 15May44 (absent 3 hrs 30 mins). (2) AA 11, Neglect to obey Regt Orders, being in London while on a pass to Bournemouth.	Documentary	5 days CB 5 days Pay	20May44	S M Lett Maj	
In the Fd	11Nov44	Rfn		AA 15(1) AWL from 1600 hrs 11 Nov 44 until 1830 hrs 27 Nov 44. Absent 16 days 2 hrs 30 mins	L cpl Morton, HA L cpl Rhyan	28 days pay	1 Dec 44	Lt-col S M Lett	Forfeits 17 dys pay under FR&I 149(1)(a) Total forfeit of 45 dys pay

CERTIFIED A TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY

(J P SEWORD) CAPT
Adjt, 1st Bn The QOR of C

Exhibit D

(PTO)

SS-105
GPL OVENS E.

SS-105

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 SIXTH day of OCTOBER, 1943.

Whereas it appears to me, the undersigned, an officer in Command of SIXTH 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; [redacted]

* 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

[redacted]

28 Oct 43.

President.

Rank.	Name.	Regiment.
Major	N.A. Adams	S Sask R

Members.

Rank.	Name.	Regiment.
Capt.	E.R. Talbot	Camerons of C
Lieut.	J.L. Morin	Fus MR
Lieut	G.M.W. Braund	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

WAITING MEMBER

*Signed (G & N Gostling) Brig
Commanding 6 Cdn Inf Bde

Convening Officer.

Nil

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)
H.20266 Cpl Earl OVENS Camerons of C	First Charge A.A. Sec 15(1) See Charge Sheet attached	Guilty	Guilty To be reduced to the ranks and undergo detention for 30 days 7 Oct 43 N A Adams Maj President	I confirm Arthur Gostling Brig Comd 6 Cdn Inf Bde 7 Oct 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) Arthur Gostling (G S N Gostling) Brig. (Signed) N A Adams Maj S Sec R

Commanding 6 Cdn Inf Bde President

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 7th day of October 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
Nil *(3. ~~The interpreter~~)
Nil (4. ~~The officers under instruction~~)
were duly sworn.

* Omit if not applicable.

Signed this 7th day of October 1943

N A Adams Maj
President of the Court Martial.

C. Certificate in case of death sentences

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

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

Nil ~~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.~~) Q

Signed this Seventh day of October 1943

Arthur Gostling
G S N Gostling Brig
Comd 6 Cdn Inf Bde
Confirming Officer.

Promulgated and extracts taken in the case of H-20266 Cpl Earl Ovens, Camerons of Canada.

(a) (Dated) 7 Oct 43 (Signed) G. P. Kidd, Capt & Adjt Camerons of Canada.

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.

(18759) Wt. 40115—295 100 m 1/40 P. St. G. 620

CHARGE SHEET

The accused H-20266 Cpl Earl OVENS of the Queen's Own Cameron Highlanders of Canada, a soldier in the Canadian Army Overseas is charged with:-

FIRST CHARGE
A.A. Sec 15(1)

Whilst on Active Service, Absence without leave

in that he,

in the field, absented himself from his unit from 0600 hrs 17 Sep 43 to 1050 hrs 24 Sep 43. Absent 7 days, 4 hrs, 50 mins.

In the Field
5 Oct 43

A.T. Law. Lt-Col
(A.T. Law)
Comd Camerons of Canada

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(G S N Gostling) Brig.
Commander 6 Cdn Inf Bde

In the Field
6 Oct 43.

I hereby acknowledge receipt of one copy of the Charge Sheet and one copy of the Summary of Evidence.

E Ovens Cpl
(H20266 Ovens, E.)

I request that an officer be appointed to represent me at my trial.

E Ovens Cpl
(H20266 Cpl Ovens, E)

Na Adams my
Pmt

DATE 7 Oct 1943

[illegible] IN THE CHARGE:

This is to certify that I have examined

No. H20266 Rank Cpl Name Ovens E.

on the above date. His category is A and he is free of communicable and infectious disease. & Fit for General Field Court Martial on above date

H Marantz Capt

M.O., Cambrons of Canada, Cdn. Army (O.S.)

I hereby acknowledge receipt of one copy of the Charge Sheet and one copy of the Summary of Evidence.

E Ovens Cpl
(H20266 Ovens, E.)

I request that an officer be appointed to represent me at my trial.

E Ovens Cpl
(H20266 Cpl Ovens, E)

*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 7th day of Oct. 1943 by order of
Brigadier G. S. McOuat commanding 6 Can Inf Bde
dated the 6th day of October 1943

President.

Major N. A. Adams S Sask R.

Members.

Capt E. R. Talbot Cameron of C
Lieut J. L. Moore Fus. M. R.

~~, Judge Advocate.~~

Trial of* H-20266 Gnr Earl Owens Cameron of C.

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

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

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

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

The accused is brought before the Court.

N/A Prosecutor,† Capt C. M. Read Royal Winnipeg Rifles

N/A Counsel‡ or defending officer† Maj. W. E. Osler Cameron of C.

N/A At 10:00 o'clock the Trial commences.

The order convening the Court is read, and is marked "X" 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—3-41 (9070)
H.Q. 1772-39-224

B

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

N.A.C. ~~The following officers under instruction are duly sworn:~~

Charge-Sheet

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

Instruction. If the accused has elected to be tried under Army Act, sec. 48 (8) the fact should be here recorded.

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.*

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

Answer.

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

Answer.

N.A. ~~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 discharge 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.

N/A *[~~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.~~]

N/A ~~The accused~~

~~is found guilty of~~

N/A

*The summary (or ~~abstract~~) of evidence is read, marked 'G', 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

Answer. The accused in mitigation of punishment says:—

H 20266 Pte Earl Swen having been duly sworn

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

state the reason why I went absent was that I was discontented the way things were going.

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.

DD

Do you wish to give evidence yourself or to call any witnesses as to character? *Question to the accused.*

Yes Sir

Lieut V L. Chapin having been duly sworn *Answer.*
states I was 2½ of A/TK Pl from 11 Feb 43
to 20 Jun 43. During that time I was Pl *Evidence as to character.*
comd 3/4 of the time due to illness of Pl Comd.
Whilst so employed Cpl Owens was a det Comd.
of one of my guns. During this time he was
a capable, reliable commander and I never
had the slightest bit of trouble whatsoever.
I am now a Pl comd and would be
willing to take this man back into my Pl.
The accused was at one time a L/S,T and
lost that rank through no fault of his
owning being sent to hospital.

E

Finding*

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

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

~~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.

Prosecutor 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.* MFM 6 & MFB 355

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked "H.T.J.," 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

[Illustration.—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.

No cross examination

Question to the accused.

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

The Court is closed for the consideration of the sentence.

F

Sentence

~~The Court sentence the accused~~ Sentence.

Maj W. E. Osler the defense officer addresses the court

From the character evidence given by his Pl. comd and also by the records it is plain to see that the accused is a good soldier. He was at Dieppe and as shown by his conduct sheet mentioned in despatches. These things were not handed out without cause. He has been in this bn. for more than three years during which time he has been an excellent soldier both as a private and N.C.O. With all this behind him he suddenly goes absent twice within a very short period. While this offence can in no way be condoned I think it is self evident that there are other factors in addition ~~in~~ the mans own character causing him to commit this offence. His record is such as to make this logical deduction and I submit that it is born out by the evidence given by his Pl. Comd. In addition I think consideration must be given to the statement of Pl. Comd. that he would be ready and willing to take him back into his Pl. While I realize that absence is an offence and as such must be punished I cannot help feeling that the interests of the service would best be furthered by the court being as lenient as possible in the matter of sentence. A soldier with a record such as the accused has has already undergone considerable punishment by the fact of his arrest and trial by court martial.

N A Adams Maj
President

Summary of Evidence

In the case of H.20266 Cpl. Earl Ovens, of the Queen's Own Cameron Highlanders of Canada, a soldier in the Canadian Army Overseas.

The accused is informed of his rights.

The Commanding Officer directs that the evidence be given under oath.

FIRST WITNESS H.19567 Sgt. Beaudoin K.P. Cameron's of Canada Cdn. Army Overseas, having been duly sworn states I am H.19567 Sgt. Beaudoin K.P. Cameron's of Canada Cdn. Army Overseas. On the 17 Sept. 43 I called the roll at 0600 hrs. Cpl. Ovens was absent. I turned the absentee report into the Coy. Orderly Room.

K.P. Beaudoin

~~H.19567~~ Sgt. Beaudoin K.P.

Accused declines to question the witness.

SECOND WITNESS H.200035 Sgt. Smith H.R. Cameron's of Canada, Cdn Army Overseas, having been duly sworn states, I am H.200035 Sgt. Smith H.R. Cameron's of Canada, Cdn Army Overseas On the 24 Sept. 43, I was Coy Orderly Sgt. At 1050 hrs. on that day, Cpl. Ovens reported to me. I advised him he was under open arrest.

H.R. Smith

H.200035 Sgt. Smith H.R.

Accused declines to question the witness.

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

I do not wish to make any statement.

Taken down by me in the presence of the accused on 4 Oct. 43 at Worthing, Sussex.

I hereby certify that R.P. 4(c) to (e) have been complied with.

W.F. Bawlf

Lieut. W.F. Bawlf
Cameron's of Canada.

"J" Adams Maj
Presid.

"1"

N A Adams Maj
President

M.F.B. 355
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H-20266	Cpl	Ovens, E.	Camerons of Canada

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

	Within last 12 months		Since enlistment	
For	A.A. Sec 15(1) one	times	A.A. Sec 15(1) one	times
For		times		times
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct Mentioned in despatches 8/10/42

or,

~~[illegible]~~

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,

~~[illegible]~~

4. The accused has been in confinement awaiting trial on the present charges, for ..... days in civil custody, and 14 days in military custody, making a total of 14 days in custody, of which [illegible] days were spent in hospital.

5. The present age of the accused according to his record of service is 23 yrs 2 wks ~~[illegible]~~

6. The date of his ~~[illegible]~~ attestation specified in his record of service is 7 Jun 40 ~~[illegible]~~

7. The service which the accused is allowed to reckon towards discharge is 3 yrs 4 mos

8. The accused is entitled to reckon 3 yrs 4 mos 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.~~

~~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:—

8 Oct 42 Date of promotion.

In the rank of Cpl one mo 22 days years. Rev to Cpl 12 Feb 43

In the rank of L/Sjt 2 months years. Prom to A/Sjt 8 Apr 43

In the rank of Sjt 12 days years. Rev to Cpl 25 Aug 43.

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 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 5th day of Oct 43 R P Kidd Capt
(R.P. Kidd)
Adjt Camerons of C

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.

M.F.M. 6
(A.F.B. 122)
40/P.& /5130 (2965)

No. H20266 Name Ovens, E. | Sqn., Battery, or Company SPCoy | Corps Camerons of C | Date of enlistment 7-6-40 | G.C. Badges | Service or Proficiency Pay | Signature O.C. Company, etc. R.Thomspon, Major

Date of last entry in Company Conduct Sheet 26-10-41 | No. and date of last drunk NIL | Period not reckoning towards freedom from extra fine | Sheet No. 3

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
Sheet No 2 destroyed in accordance with Overseas RO No 319 on completion of 2 yrs service 7-12-42									
Field	21/8/43	L/Sjt		WOAS absent without leave in that he was absent from 2359 hrs 21 Aug 43 to 2200 hrs 22 Aug 43 (Absent 21 hrs 59 mins) AA Sec 15(1)	H-19567 Sjt Beaudoin, R.P. H-19949 Cpl Wold, E.	Reverted to Cpl	25 Aug 43	Lt-Col A.T. Law	

CERTIFIED TRUE COPY

(G.F. Kidd) Capt
Adjt
Camerons of Canada

"H"

(P.T.O.)

COUNTER NUMBER 559429

HOUR 12.10

OPERATOR'S INITIALS PS

RELIEVING OPERATOR _____

Affidavit

PROVINCE OF ONTARIO
COUNTY OF CARLETON
TO WIT:

I, Edward Rose 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.1 1952

APPENDIX "A" TO THE AFFIDAVIT

CAMERA OPERATOR'S REPORT

		JOB NO. 44	REEL NO. 71
		BOOK NO. 7-5	
PRODUCTION DATA		44-71A	INDEXING DATA 44-71B
	DATE	HOUR	BEGINS WITH OSWOOD F.S. OUELLET J.C.E.
STARTED			1. OWEN R.J.
FINISHED			2.
TOTAL NO. OF HOURS		1 2/3	3.
TOTAL NO. OF IMAGES		1626	ENDS WITH OUELLETTE J.R. OWENS,E.

J.R.

END

SECOND

SIDE


44.71